

1600/202.

LILLY'S
COLLECTION
OF
MODERN ENTRIES.
VOL. I.

THE
LIBRARY
OF THE
MUSEUM
OF
COMPARATIVE ZOOLOGY
AND ANATOMY
OF THE
HARVARD UNIVERSITY
OF THE
MUSEUM OF
COMPARATIVE ZOOLOGY
AND ANATOMY
OF THE
HARVARD UNIVERSITY



A *Moule*
COLLECTION
OF *Modern Hall*
MODERN ENTRIES:
OR *Essex*
SELECT PLEADINGS
IN THE
Courts of KING'S BENCH, COMMON PLEAS,
and EXCHEQUER, viz.

Declarations, Pleas in Abatement and in Bar, Replications, Rejoinders, &c.
Demurrers, Issues, Verdicts, Judgments, Forms of making up Records
of *Nisi prius*, and Entering of Judgments, &c. in most Actions. Many of
them drawn or perused by Mr. BRODERICK, CARTHEW, COMYNS, DARNEL,
HOLT, LEVINZ, LUTWICHE, NORTHEY, PARKER, PEMBERTON, PEN-
GELLY, POLLEXFEN, RAYMOND, SALKELD, SAUNDERS, SHOWER, THOMSON,
TREVOR, WEARGE, and other learned Counsel.

AS ALSO,
Special Assignments of ERRORS, and Writs and Proceedings thereupon,
both in the said Courts and in Parliament.

WITH
The Method of suing to and reversing OUTLAWRIES by WRIT
of ERROR or otherwise.

TO WHICH IS ADDED,
A Collection of WRITS in most Cases now in Practice.
With Two TABLES, one of the NAMES of the CASES, and
the other of the PLEADINGS and WRITS.

By JOHN LILLY, Gent.

THE FIFTH EDITION, IN TWO VOLUMES.

VOL. I.

L O N D O N :

PRINTED BY A. STRAHAN AND W. WOODFALL,
LAW-PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY;
FOR J. RIVINGTON & SONS, A. STRAHAN, R. BALDWIN, E. & R. BROOKE,
G. & T. WILKIE, WHIELDON & BUTTERWORTH, W. BROWN,
W. CLARKE, & R. PHENEY.

1791.



P R E F A C E

TO THE

F I R S T E D I T I O N.

THE greatest part of the following collection of Precedents, as also the Writs, were intended by Mr. LILLY, late Principal of Clifford's Inn, in his life-time, to have been published (he being concerned in most of the causes, whereof the Entries and Precedents are here collected.) The addition since his time is done by a careful and judicious hand; they are truly modern, being drawn and used in the reigns of king William and queen Mary, queen Anne, and many of them in his present majesty's reign, and drawn by the most eminent men in those reigns, many of whom are now living.

In this collection particular care has been taken to examine them with their originals, and to give an account what was the consequence of the pleadings. Herein are added proper references to books, that treat of the practick part of the law, which will render them yet more useful.

P R E F A C E.

‘ As the practice of prosecuting writs of error
 ‘ is now become so frequent, here is a particular
 ‘ collection of most of the Assignments, Pleadings,
 ‘ and issues therein, not only in the King’s Bench
 ‘ and Exchequer, but of writs of error out of Ire-
 ‘ land, and in parliament; also the *scire facias ad*
 ‘ *satisfaciendum* on a bond made to the king, and
 ‘ *scire facias* to repeal patents granted by the
 ‘ crown; with many other useful matters. The
 ‘ design of this collection is for the benefit of all
 ‘ students and practitioners; if it has that effect,
 ‘ the end of the publication is attained.’

It may not be improper to add, that the translation of the Precedents in this edition are done with the greatest care and exactness; also many new references are added, and other useful remarks.



TABLE

T A B L E

O F

The NAMES of the CASES.

A.		Barnjum <i>against</i> Niccolson, Page 435
A	CTON and Sumner, Page 217	Barrington <i>against</i> Archer, 146
	Adams and Furgeon, 44	Barrow <i>against</i> the tertenants of Hopkins, 387, 388
A	Adams at the suit of Reily, &c. 118	Bave <i>against</i> Creswick, 368
	Adams and Oakes, 323	Beacher <i>against</i> Perkins, 436
A	Adams <i>against</i> the tertenants of Savage, 398	Beamis and his Wife <i>against</i> Smith, 455
	Albe <i>against</i> Cowdale and others, 429	Beauchamp and Durdant, 232
A	Alexander and Woods, &c. 227	Berkley and Man, 440
	Andrews and Lilly, 202	Berkley and Bathe, 446
A	Andrews <i>against</i> Thornton, 12	Bettenson, bart. and Henchman, esq; &c. 320
	Andrews, &c. and Lee, 72	Betham and Shorte, 503
A	Arkell at the suit of Humphry, 1	Birkhead <i>against</i> Rowe, 164
	Ashurst and Strange <i>against</i> Mingar and Ferrand, 135	Blackley and Cox, 39
A	Ashton and Sherman, 158	Blanford and Ives, 518
	Astill <i>against</i> Clark, 376	Bluet and Saunders, 492
A	Astie, who as well, &c. <i>against</i> Fissenden, 175, 511	Bluck <i>against</i> Wright, &c. 65, 518
	Atkinson <i>against</i> Wilcox, 387	Bodley at the suit of Doble, 114
A	Attorney General <i>against</i> Peckham, &c. 301	Bokenham and his wife <i>against</i> Manley, 174
	Austin and Huggins, 40	Bolsworth <i>against</i> Pilkington, 73, 515
B.		Bond and Butler, 187
B	Bagnall <i>against</i> Billingay, 130	Booge <i>against</i> Edwards, 50
	Bagnley and Chifwell, 484	Booth and Johnson, 471
B	Ball <i>against</i> Cock, Cox, 280	Boothby, bart. at the suit of Vincent, 391
	Ballard and Tayler, 62	Bracebridge and Waton, 61
B	Bank of England <i>against</i> Parry, 29	Brackley and Stanton, 1
	Banks, bart, <i>against</i> Peckham, &c. 302	Bradshaw and Gower, 222
B	Barnardiston and Chapman, 221	Brett and Minter, &c. 489
		Brook and Tayler, 35, 488
		Broughton, bart. 5
		Browne and Cary, 25
		Browne and Davis, 38
		Browne and Deeble, 7
		Browne and Kent, 177
		Bulkeley

A Table of the Names of the Cases.

Bulkeley and Roberts,	Page 455	Deacon, &c. and Felly,	Page 26
Burnham <i>against</i> Goodman,	(377)	Delves and Gunner,	467
Burr and Atwood,	225, 290, 403	Digby (Lord) and Barford,	357
Butcher and Porter,	353	Dobson <i>against</i> Shore,	9
Butler and Wilmot,	246	Drake and Bateman,	100
Butler, widow, <i>against</i> Britland, esq;	211,	Drury and Daley <i>against</i> Monger,	165
	398	Duke of Newcastle <i>against</i> Jermyn,	22
Byne and Dodderidge,	311	Dummer <i>against</i> Fitch,	79, 508
		Dunstar <i>against</i> Peirce,	55

C.

Carr and Oldys,	403
Carter <i>at the suit of</i> Bennet,	3
Carter and Mogg,	9
Child <i>against</i> How,	132
Chinnel and Sparkes,	495
Chifwell <i>against</i> Baguley,	15
Chifwell <i>against</i> Browne,	103
Clanricard (Lord) and Fitzgerald,	287
Clarke <i>against</i> Atton,	163
Clark, one, &c. and Chauncey,	74
Clarke and Masters and others,	517
Clarke and the mayor of Guildford,	109
Clay <i>at the suit of</i> Bonham,	103
Clithero and Franklyn,	92, 523,
Colepepyr, bart. <i>against</i> Tooke,	17
Collet, knt, <i>against</i> Lloyd,	328
Collins <i>against</i> Ford,	66
Compton, knt. <i>against</i> the earl of Kildare,	514
Cooper, bart. and St John, esq;	64
Coote and Lynch,	225, 271
Coulthurst <i>at the suit of</i> Wooton,	498
Coursey, esq; and Compton, knt.	21, 226
Coventry (Mayor of) <i>against</i> Palmer,	48
Crawley and Holloway,	144
Creswick and Træbody,	367
Crompt and ———	9
Crosse <i>against</i> Bilson,	351
Crosse and Crosse,	461
Crosse and Lewis,	484
Croxhall, &c. <i>against</i> the inhabitants of the hundred of Hemlingford,	295, 514
Curson <i>against</i> Faunt,	168
Cutting and Williams,	227

D.

Dade <i>at the suit of</i> Bickford,	7
Dalby <i>at the suit of</i> Lady Holles,	115
Daniel <i>aga.nst</i> Crogall, &c.	359
Darrell and Wither,	437
Davey <i>aga.nst</i> Arnold,	237
Day and Hellington,	67

E.

Earl of Kildare <i>against</i> Shaen, knt.	213,
	291
East and South,	34
East and West,	<i>ibid.</i>
Eastman and Butler,	41
Edwards and Fox,	463
Edwards and Luttrell,	290
Eeles and Stiles,	43
Elmes and Heath,	36
Eldridge and Burfeild,	505
Else and Cotton,	229
Etterick <i>at the suit of</i> Fellow,	476

F.

Farmer <i>against</i> the bail of Ryves,	395
Farmer <i>against</i> Rogers,	185
Farnaby <i>against</i> Reeves and others,	425
Farrington and Lenthall,	153
Fawcett <i>against</i> Chapman,	151
Fellow <i>against</i> Harpur, &c.	476
Fisher <i>against</i> Wigg, &c.	205
Ford <i>against</i> Taylor, &c.	520
Foster, &c. <i>against</i> Hall,	325
Fovergne <i>against</i> Hampson,	514
Fowler <i>at the suit of</i> Tappenden,	474
Fox <i>against</i> King, &c.	232
Frampton and Nourse,	3
Freake, &c. <i>against</i> Heskett,	517
Frith and Henley,	24
Frith and Herd,	5, 178
Frith and Kemp and others,	8
Frogat and Marryot,	378
Fuller <i>at the suit of</i> Dovee,	11

G.

Gage, esq; <i>against</i> Acton, widow, &c.	213
Gardner and his wife and Pickering,	4
Garlick and Gantlet,	399
Gawler	



A Table of the Names of the Cases:

ix

Gawler and Elliot,	Page 230
Gibson and Oufnam,	23
Goddard against Fowle,	148
Graham and Harrod,	439
Gratton, &c. and Leeds,	254
Green and Alchorne,	347
Green, &c. against Waller,	233
Grice and Leigh,	381
Grindall against Leighton,	524

H.

Hackett against Tilly,	160
Hackett at the suit of Glover,	38
Hall and Stanley,	18
Halfey against Hope,	303
Hanmer and his wife and Jacob,	291
Harding against Wood,	429
Harris and Wright, esq;	24
Harrison against Ling, &c.	390
Hafell and Spooore,	444
Hawbank and Trim,	80
Hawley and Monger,	252
Heath against Heath,	83
Henderfon against Cross, &c.	453
Higgins against Smith, &c.	431
Higgins against Baldwin,	472
Hoare and Clarke,	4
Hodgson and Kay,	69
Holdmystaffe against Legawe,	204
Holmden, widow, against Gregory,	189
Howard and Taylor,	226
Howell against Harry and his wife,	234
Hubbard against Handford,	356
Huckell and Higginson,	292
Hunlocke against Leigh, bart.	180
Hurft and Hurft,	84
Hyde at the suit of Johnson,	391

I.

Jacobson, &c. against Lee,	349, 518
James and Englefield, bart.	31
Inclendon and Dutcheffs of Hamilton,	473
Ingram and Hale at the suit of Fletcher,	369
Infes and Kirwood,	42
Jodrell against Jennings,	268
Johnson and Godson,	30
Jones at the suit of Hayes, widow,	183
Jones against Stephens,	229
Jones and Tully,	394, 504
Joseph and the lord Mohun,	145
Joyner and Horwood,	178

K.

Kildare (Earl of) against Shaen, knt.	Page 233
King (the) against Bolton, &c.	523
— against Copleston, one of the lord Montague's witnesses,	297,
— against the lord Griffin,	304
— against Prior and Dandy,	339
— against the bishop of London, and Lancaster,	342
— against the archbishop of York and Sowton,	344
— against the governor and company of copper miners in England,	411
— against Yale, esq;	419
King and Peach,	29
Kingsale (earl of) and Compton, knt.	478
Kirkman and Robinson,	54
Kitchener at the suit of Browning,	126

L.

Lady Clanrickard and Fitzgerald, knt.	287
Lady Digby against Barford,	357
Leak against Legawe,	203
Lee and Scarmer,	447
Legawe and Plumer,	202
Legg against Stephens, &c.	363
Levott and the College of Physicians, London,	2
Leving and Good,	438
Lewes and Jones,	226
Lickfeild at the suit of Rapley,	494
Liddiard and Creswicke,	365
Linton and Bilson,	453
Littleton at the suit of Cooke,	456
Lloyd against Badger,	233
Lloyd and Campbell,	(378) 521
Lucas and Legawe,	194
Lynch against Coote, esq;	181
Lysons against Stapley, widow,	166

M.

Madox and Wynne,	244
Man, &c. against Oades,	73
Mansell and Stamford and others,	21
Mason and Slipper,	87
Mathews against Hodge,	21
Mathews against Ludlowe,	229

Mayor

A Table of the Names of the Cases.

Mayor of Coventry <i>against</i> Palmer, &c.		Pelham (lord) <i>and</i> Fagg,	Page 500
	Page 48	Pelline <i>and</i> Fox,	156
Mead, &c. <i>at the suit of</i> Maidwell, esq;	376	Peters <i>against</i> Heather,	389
Medlicott <i>against</i> Mounson,	75	Pettyward <i>against</i> Kent, &c.	167, 482
Michell <i>at the suit of</i> Rolfe,	186	Peyto <i>against</i> Hyde,	128
Minter <i>and</i> others <i>at the suit of</i> Brett,	489	Philips <i>and</i> Smith,	254
Mitchall <i>and</i> Purnett,	71	Physicians (College of) <i>and</i> Levett,	2
Moller <i>and</i> Isted,	2	Pippin, &c. <i>at the suit of</i> Maynard,	358
Moore <i>against</i> Drewry,	374	Plowman <i>and</i> Ward,	458
Moore <i>and</i> Johnson,	253	Ponder <i>against</i> Braddill,	67
Moore <i>against</i> Plumley,	68	Pope <i>against</i> Crofs, &c.	335
Moore <i>against</i> Rowe,	164	Povey <i>against</i> Cesar,	394
More <i>and</i> Watts,	293	Poufson <i>against</i> Francia,	405
Morgan <i>and</i> Read,	134	Powle, &c. <i>against</i> Barwell,	175
Morris <i>against</i> Oldys, &c.	316	Powle, &c. <i>against</i> Tebutt,	176
Morrice, &c. <i>and</i> Walker,	286	Preston <i>and</i> Holkins,	454
Morton <i>and</i> Steddall,	44	Prife <i>and</i> his wife <i>against</i> James,	163
Mountfort <i>against</i> lord Griffin,	210	Probert <i>and</i> Edmonds,	225
		Puerfoy, &c. <i>at the suit of</i> Littleton,	392

N.

Newcome <i>and</i> Bambridge,	5
Newton <i>against</i> Creswick,	440
Nowell <i>against</i> Batchellor,	168
Nurton <i>against</i> Paris,	84

O.

Offey <i>against</i> Orme, &c.	179
Oldham <i>against</i> Pepper,	321
Orchard <i>and</i> Shepheard,	224, 392
Offgood <i>and</i> Alexander,	268
Ousnam <i>and</i> Gibson,	483
Ousnam <i>and</i> Mittell,	224
Owen <i>against</i> Hughes,	436

P.

Pack <i>against</i> Easterfield,	16
Page <i>and</i> Hughes,	319
Page <i>against</i> Morgan <i>and</i> another,	14
Palgrave, bart. <i>and</i> Windham, esq;	46
Palmer <i>and</i> Trever,	441
Parker <i>and</i> Edwards,	525
Parsley <i>and</i> his wife <i>against</i> Liverfay <i>and</i> his wife,	177
Partridge <i>at the suit of</i> Baldwin,	475
Patherick <i>and</i> Walden,	465
Payne <i>at the suit of</i> Payne,	115
Peers <i>and</i> Lucy, &c.	449
Peirce <i>at the suit of</i> Dunstar,	471

Q.

Queen <i>and</i> Davis,	145
Queen Dowager <i>against</i> Briggs,	151
Quennell <i>and</i> Diddlestold,	147

R.

Raper <i>at the suit of</i> Swaine,	1
Read <i>and</i> Waldron,	288
Rebow, knt. <i>and</i> his wife, <i>and</i> Honywood,	510
Rebow, knt. <i>and</i> his wife, <i>against</i> Plomer,	172, 504
Renault <i>and</i> Graham,	236
Reynolds <i>against</i> Seymour,	231
Rosewell <i>against</i> Prior,	81, 516

S.

Sandes <i>and</i> Lloyd,	447
Saunders <i>against</i> Hanslape,	322
Saunders <i>and</i> Owen,	278
Saunders, esq; <i>against</i> the sheriff of Middlesex,	37
Sayle <i>and</i> Frank,	62
Scawen <i>and</i> Garret,	3
Scot <i>against</i> Burgess,	434
Seras <i>and</i> Harris,	470
Shearman <i>against</i> Wright,	54
Shoeres <i>against</i> Pomeroy,	230
Shish <i>and</i> Keech,	38
Short, &c. <i>and</i> Beetham,	393
Sibson	

A Table of the Names of the Cases.

xi

Sibson <i>against</i> Atkinson,	Page 515		
Silverlock <i>and</i> Thompson,	107	V.	
Slate <i>and</i> Freeman,	486		
Smith <i>against</i> Crawford, esq;	187	Underhill <i>against</i> Durham,	Page 192
Smith <i>against</i> England, &c.	442	Vymer <i>against</i> Holborowe,	148
Smith <i>against</i> Farmer,	192, 515	Vynal <i>and</i> Harman,	460
Smith <i>and</i> Harmer,	492		
Smith <i>against</i> Povey,	164	W.	
Sparrow <i>against</i> Dunch, &c.	516		
Spiller <i>and</i> Andrew,	189		
Startup <i>and</i> Dodderidge,	19	Walker <i>against</i> Towersey, &c.	349
Stationers Company <i>and</i> Hunt,	153	Wall <i>against</i> Town,	247
Stationers Company <i>and</i> Tooke,	4	Wallbank <i>and</i> Bucknall, &c.	69
Stationers Company <i>against</i> Marlow,	63	Wallcot <i>and</i> Dillon,	238
Stephens, &c. <i>against</i> Wickham, &c.	65	Wanley <i>against</i> Lord, &c.	45, 504
Stone <i>and</i> Gulston,	461	Warner <i>against</i> Riddall,	53
Strode <i>and</i> Palmer,	248	Warton, knt, <i>and</i> Careiron, &c.	90
Suell <i>against</i> the tertenants of the earl of		Webb <i>against</i> Hawson,	453
Anglesey,	384	West <i>and</i> West,	51
		White <i>and</i> Combes, &c.	106
T.		White <i>against</i> Howell <i>and</i> his wife,	45
		Whyte <i>and</i> Baynton,	48
Tallant <i>and</i> Jermyn,	509	Wickham <i>against</i> Sperring,	70
Tanner <i>at the suit of</i> Blisse,	475	Wilkins <i>and</i> Frogley,	28
Tawdin <i>and</i> Lavie,	13	Wilkinson <i>and</i> Weale,	167
Taylor, &c. <i>and</i> Ford,	247	Williams, <i>and</i> Fowler,	253
Tebutt <i>at the suit of</i> Powle,	498	Willis <i>and</i> Den,	375
Terrey <i>and</i> Duvall,	166	Winchurst, &c. <i>against</i> Belwood, &c.	278
Terry, &c. <i>and</i> Page, &c.	30		
Thornby <i>against</i> Fleetwood,	524	Winter <i>and</i> Wiberg,	20
Thurstout <i>and</i> Reyner,	397	Winter <i>against</i> Camborne,	444
Tindall <i>and</i> Wood,	155	Winter <i>and</i> Wilson,	33
Tirrell <i>against</i> Sedgwick,	88	Withers <i>and</i> Offen,	
Tirrey <i>and</i> Duvall,	473	Woodhouse <i>and</i> Twysford,	6
Titus, esq; <i>against</i> Parkins, knt.	371	Woofely <i>and</i> Fowler,	43
Tomkins <i>against</i> Robartes,	14	Wrench <i>and</i> Jacques,	173
Tooler <i>against</i> Archer,	19	Wright <i>and</i> Martine,	25
Toone, widow, <i>and</i> Theobald,	60		
Townsend <i>and</i> Laurence,	141	Y.	
Turner <i>and</i> Turner,	13		
Twitty <i>and</i> Houlder,	227	Yale <i>against</i> Kirwood, knt.	307
Twitty <i>and</i> Bell <i>against</i> Morley,	217	Yorke <i>against</i> Jordan, &c.	194

Abate.



Abatement.

Arkell at the suit of Humphry.

AND upon this *Robert Arkell*, by *John Lilly* his attorney, comes and defends the force and injury, &c. And prays judgment of the bill aforesaid, because he says, that he is the same person against whom the said *Thomas Humphry* hath exhibited the bill aforesaid by the name of *Robert Askell*, and that he is named and called by the name of *Robert Arkell*, and by the same name from the time of his birth always was called and known, without that, that he is called by the name of *Robert Askell*, or by the same name was called and known: And this he is ready to verify: Wherefore he prays judgment of the bill aforesaid, and that that bill may be quashed.

Misnomer in the
surname.
Pract. Reg. 5.
4 Mod. 347.
10 Co. 122.
11 Co. 21.
Salk. 18.

By the statute 4 Annæ, no dilatory plea shall be received in any court of record, unless the party offering the same doth by affidavit prove the truth thereof, or shew some probable matter to the court to induce them to believe that the fact of such dilatory plea is true; which has occasioned the framing this affidavit:

4 Annæ, c. 16.
sect. 11.

In the King's Bench

Between

A. B. the defendant in this cause, maketh oath, that the substance and matter of fact in the plea hereunto annexed is true.

The form of
an affidavit in
all cases where
a plea is in
abatement.

Raper at the suit of Swaine.

AND the said *Edward*, by *T. S.* his attorney, comes and defends the force and injury, &c. and says, that the said *Edward* to his bill aforesaid ought not to be answered, because he says that the said *Edward* is an alien born at *Callis* in the kingdom of *France* in parts beyond the seas, under the legiance of *Lewis* the *French King*, an enemy of the now Lord the King of *England*, born of father and mother enemies of the Lord the King of *England*; and to his same enemy adhering, and came into the kingdom of *England* without the safe conduct of the said Lord

Plea.
Alien enemy.
4 Co. 55.
Salk. 46, 116.
Pract. Reg. 8.

The paging of this edition is made to correspond with that of the former editions, by pointing out the commencement of each page in the margin. The paging is also continued at the corner for the purpose of more convenient reference.

Abatement.

the King: And this he is ready to verify: Wherefore he prays judgment if the said *Edward* to his bill aforesaid ought to be answered, &c.

Will. Hall.

Brackley and Stanton.

Nota.
Coverture.
Pract. Reg. 8.
Salk. 7. 8.
6 Mod. 230.

AND the said *Sarah* in her proper person comes and prays judgment of the bill of the said *William* aforesaid, because she says, that she the same *Sarah* at the time of the exhibition of the bill of the said *William* against the said *Sarah* was covert with one *John West* then and yet her husband, and living, to wit, at *Islington* aforesaid in the county aforesaid: And this the same *Sarah* is ready to verify: Wherefore because the said *John West* is not named in the bill aforesaid, the same *Sarah* prays judgment of the bill aforesaid, and that that bill may be quashed.

Replication.

And the said plaintiff says, that by any thing by the said *Sarah* above by pleading alledged, the said bill of him the said *William* now filed ought not to be quashed, because he says that the said *Sarah* at the said time of the exhibition of the bill aforesaid, to wit, 23d day of *October* in the tenth year of the reign of the said now Lord the King, to wit, at *Islington* aforesaid in the county aforesaid, was sole; without that, that the said *Sarah*, at the said time of the exhibition of the bill aforesaid of the plaintiff aforesaid or ever after, was covert of the said *J. W.* her husband, in manner and form as the same *Sarah* above by pleading hath alledged. And this he is ready to verify: Wherefore he prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt to be adjudged to him, &c.

[2]

Traverse.

And the said *Sarah* as before says, that she the same *Sarah* at the said time of the exhibition of the said bill was covert of the said *J. W.* her husband, in manner and form as the same *Sarah* above by pleading hath alledged: And of this she puts herself on the country. And the said plaintiff likewise, &c. Therefore let a jury thereof come, &c.

Rejoinder.

Issue.

Levett and The College of Physicians, London.

Mishomer of
addition of
the degree.
4 Mod. 47.

AND the said *Henry Levett*, by *R. S.* his attorney, comes and prays judgment of the bill aforesaid, because he says, that he the said *Henry*, long before the exhibition of the bill aforesaid, as also the same day of the exhibition thereof, was and yet is a Doctor of physick in due manner made by the university of *Oxford*, to wit, at *London* aforesaid, in the parish and ward aforesaid: Wherefore for that the same *Henry* is not named Doctor of physick in the bill aforesaid, he prays judgment of the said bill, and that that bill may be quashed, &c.

AND



AND the said *T. C.* by *John Lilly* his attorney, comes and defends the force and injury, &c. and prays oyer of the writing obligatory aforesaid, and it is read to him in these words, to wit, Know all men by these presents, &c. which being read and heard, the same *T. C.* prays judgment of the declaration aforesaid, because he says that at the said time of the sealing and delivery of the writing obligatory aforesaid, whereon the said plaintiff against him the defendant complains, to wit, on the said third day of *May* in the eleventh year of the reign, &c. in the declaration aforesaid abovementioned, at *Lewis* aforesaid in the county aforesaid, the said *E. F.* and *G. H.* in the writing obligatory aforesaid named did likewise seal and deliver the writing obligatory aforesaid as the act and deed of them the said *E. F.* and *G. H.* to the said plaintiff, and became firmly bound to the said plaintiff jointly with the said defendant by the same writing obligatory in the said 100*l.* which said *E. F.* and *G. H.* are yet surviving and living, to wit, at *Lewis* aforesaid in the county aforesaid: And this he is ready to verify: Wherefore for that the said *E. F.* and *G. H.* are not named defendants together with the said defendant in the declaration aforesaid mentioned, the same defendant prays judgment of the declaration aforesaid, and that that declaration may be quashed, &c.

Abatement.
That defendant
sealed the bond
jointly with
E. F. and *G. H.*
who are not
sued.

Moller and Isted.

AND the said *Thomas*, in his proper person, comes and defends the force and injury, &c. and prays judgment of the bill aforesaid, because he says, that he the same *John* in the court of the said Lady the Queen now here otherwise, to wit, in *Easter* term last past brought his writ against the said *Thomas* in the plea aforesaid; and thereupon the same *John* declaring against him the said *Thomas* by the name of *Thomas Isted* late of *London*, Gent. then and there appearing at the suit of the said *John* in the said plea complained, That whereas the said *John Moller* the first day of *April* in the year of our Lord 1701, at *London*, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, was possessed of divers goods and chattels, to wit, of two butts of spirits of wine called brandy, to the value of 150*l.* as of his proper goods and chattels, and so thereof being possessed the goods and chattels aforesaid out of his hands and possession casually lost, which said goods and chattels afterwards, to wit, the same first day of *April* in the year of the Lord 1701 aforesaid, at *London* aforesaid, in the parish and ward aforesaid, to the hands and possession of the said *Thomas* by finding came; nevertheless the said *Thomas* knowing the goods and chattels aforesaid to be the proper goods and chattels of the said *John Moller*, and to him the said *John Moller* of right to belong and appertain, but contriving and fraudulently intending him the said *John Moller* of those goods and chattels craftily and subtly to deceive and defraud, the goods and chattels aforesaid,

Another action
pending in the
same court.
Salk. 715.
Pract. Reg. 72
5 Co. 61.
Salk. 8.

[3]

altho' often requested, to the said *John Moller* had not delivered, but the goods and chattels aforesaid afterwards, to wit, 10th day of *November* in the year of the Lord 1701 aforesaid, at *London* aforesaid in the parish and ward aforesaid, to his own proper use converted and disposed, to the damage of the said *John Moller* 120l. And therefore he then produced the suit, &c. And the said *Thomas Isted* by *A. B.* his attorney came and defended the force and injury, when, &c. and then prayed licence of imparling thereto here until the morrow of the holy *Trinity* then next following; and had it, &c. The same day was then given to the said *John Moller* here, &c. as by the record in court here remaining more fully appears, which said plaint or plea upon the writ aforesaid, in form aforesaid obtained in the said court of the said Lady the Queen now here to wit, at *Westminster* aforesaid, yet depends indiscussed, undetermined and not discontinued. And the said *Thomas* farther says, that the said *John Moller* in the said former declaration and plea named, and the said *John Moller* in the said bill against him the said *Thomas Isted* now exhibited, are one and the same person, and not another nor divers; and that the said *Thomas Isted* in the said former declaration and plea named, and the said *Thomas Isted* in the said bill against him the said *Thomas Isted* exhibited, are one and the same person, and not another nor divers. And the said *Thomas Isted* farther says, that the goods and chattels in the declaration and plea aforesaid first mentioned, and the goods and chattels aforesaid, in the bill aforesaid now exhibited against him the said *Thomas* mentioned, are one and the same goods and chattels, and not other nor divers: and this he is ready to verify: Wherefore he prays judgment of the bill aforesaid, in form aforesaid exhibited, (the said former plea and declaration as aforesaid yet in court here depending indiscussed and undetermined,) and that that bill may be quashed, &c.

Carter at the suit of Bennet.

Infancy
pleaded by
guardian.
Pract. Reg.
53, 655.

AND the said *Anne*, who is under the age of 21 years, by *R. C.* her guardian by the court of the Lady the Queen now here specially admitted, comes and defends the force and injury, &c. and prays judgment of the bill aforesaid, because she says, that she the said *Anne* the day of the exhibition of the bill aforesaid was and yet is under the age of 21 years, to wit, of the age of 19 years and no more, to wit, at *London* aforesaid in the parish and ward aforesaid, and that the said *Hannah* prosecutes her bill aforesaid against the said *Anne* neither by her next friend nor by her guardian: And this she is ready to verify: Wherefore she prays judgment of the bill aforesaid, and that that bill may be quashed, &c.

Scawen and Garret.

AND the said *John* in his proper person comes and says, that he is, and the day of the exhibition of the bill of the said *Thomas* aforesaid, and for divers years before, was an attorney of the court of the Lady the Queen of the Common Bench in his said office at *Westminster* in the county of *Middlesex*, attending divers affairs of many of the liege people of the said Lady the Queen in that Bench prosecuting and defending as their attorney; and that the same *John*, and all other attornies of that Bench, while they so any business prosecute or defend, according to the custom in the same court of Bench at *Westminster* hitherto used and approved, should not nor ought to be drawn or compelled, nor at any time past have been accustomed to be drawn or compelled against their will, to answer before any justices or ministers of the Lady the Queen, or other judges secular whatsoever, except before the justices of the said Lady the Queen of the Common Bench at *Westminster*, on any pleas, complaints or demands which do not touch the person of the Lady the Queen; (plea of freehold, felonies and appeals, only excepted): And this he is ready to verify: Wherefore he doth not intend that the court of the Lady the Queen here the plea aforesaid against him will or ought to determine.

St. John Broderick.

Frampton and Nourse.

AND the said *Charles Frampton*, by *J. L.* his attorney, comes and prays judgment of the writ of *scire facias* aforesaid, because he says, that after the rendition of the judgment aforesaid in the writ aforesaid above specified, to wit, 16 Day of *November* in the sixth year of the reign of the Lord *William* the Third now King, and the Lady *Mary* late Queen of *England*, &c. at *Westminster* aforesaid in the county of *Middlesex* aforesaid, he the said *Charles Frampton*, for the revocation of the judgment aforesaid prosecuted out of the court of the said Lord the King and the Lady late Queen of Chancery, then held at *Westminster* aforesaid in the said county of *Middlesex*, a certain writ of the said Lord the King and the Lady the late Queen, to correct error of and upon the judgment aforesaid in the said writ specified, directed to *John Holt*, Kt. chief justice of the said Lord the King and the Lady the late Queen, assigned to hold pleas in the court of the Lord the King and the Lady the late Queen, before them the Lord the King and the Lady the late Queen, and returnable *Tuesday* 27th day of the instant month of *November* then next following, in the court of the chamber of the Exchequer of the said Lord the King and the Lady the late Queen at *Westminster* before the justices of the said Lord the King and the Lady the late Queen of the Bench, and the barons of the Exchequer of the

A Writ of Error pending in the Exchequer chamber pleaded to a *Sci fac quare execut non* on the judgment. Pract. Reg. 5, 6.

27. El. c. 8.

[4]

same King and Queen of the degree of the coif, according to the form of the statute in such made and provided; which said writ after the issuing and before the return thereof, to wit, 20th day of *November* in the sixth year of the reign of the King and Queen above said, at *Westminster* afore said in the said county of *Middlesex*, to the said *John Holt* chief justice afore said in due form of law was delivered in form of law to be executed; which said *John Holt* chief justice afore said, the said writ to correct error afore said into the said chamber of Exchequer as yet hath not returned, and nothing therein done: And this he is ready to verify: Wherefore he prays judgment if he the said *Charles* ought to be compelled to answer to the said writ of *scire facias* of the said *Charles Nourse*, pending the said writ of error undetermined, &c.

Hoare and Clarke.

Midd' to wit. **J**OSEPH Clarke complains of *John Hoare* in the custody of *Robert Davers*, Bart. high steward of the liberty of *St. Edmunds Bury* in the county afore said, in a plea that he render to him 100*l.* (so declares in debt upon a judgment): And therefore he produces the suit, &c.

Plea; misprision of the county.

And the said *John*, by *John Allen* his attorney, comes and defends the force and injury, and says that the liberty of *St. Edmunds Bury* is, and from time immemorial was, in the county of *Suffolk*, and not in the county of *Middlesex*, as by the bill of the said *Joseph Clarke* above is supposed; And this he is ready to verify: Wherefore he prays judgment if the said *John Hoare* ought to answer to the bill of the said *Joseph Clarke*, &c.

Affidavit according to 4 Ann.

L. S. Gent. maketh oath, that the liberty of St. Edmunds Bury as this deponent is credibly informed and verily believes, is in the county of Suffolk, and not in the county of Middlesex, as the plaintiff by the declaration hereunto annexed hath alleged.
L, S,

Gardner and his wife and Pickering.

Plea that the marriage was not solemnized according to the usage of the Church of England. Salk. 8.

AND the said *Michael* and *Elizabeth*, by *A. F.* their attorney, come and defend the force and injury, and pray judgment of the said writ of the said *Margaret*, because they say that the day of the impetration of the said writ original of the said *Margaret*, to wit, 23 *January* in the 10th year of the reign of the now Lady the Queen, the marriage between the said *Michael* and *Elizabeth* was not solemnized according to the ecclesiastical law of this kingdom of *Great Britain*: And this they are ready to verify: Wherefore they pray judgment of that writ, and that that writ may be quashed, &c.

T. Pengelly,

The Company of Stationers and Tooke.

AND the said *Benjamin* by *N. H.* his attorney comes, and the same *Benjamin* defends the force and injury, &c. and prays judgment of the bill aforesaid, because he says that the said plaintiffs are named and called The master and keepers or wardens and commonalty of the mystery or art of Stationers of the city of *London*, and by the same name and title were always named and called; without that, that they are named and called The master and keepers, or wardens and commonalty of the mystery and art of stationers of the city of *London*, as by the bill above is supposed: And this he is ready to verify: Wherefore he prays judgment of the bill aforesaid, and that that bill may be quashed, &c.

Misnomer in the stile of the corporation.
Salk. 8.
Pract. Reg. 199.

And the said master and keepers, or wardens and commonalty of the mystery (a) or art of stationers of the city of *London* say, that by any thing by the said *Benjamin* above by pleading alledged, the bill of the said master and keepers, or wardens and commonalty of the mystery (a) or art of stationers of the city of *London*, ought not to be quashed, because they say, that the plea aforesaid by the said *Benjamin* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to quash the bill of the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, to which said plea they the same master and keepers, or wardens and commonalty of the mystery (a) or art of stationers of the city of *London*, have no necessity, nor are by the law of the land bound any way to answer: And this they are ready to verify: Wherefore for want of a sufficient answer in this behalf, they the same master and keepers, or wardens and commonalty of the mystery (a) or art of stationers of the city of *London*, pray judgment, and that the bill aforesaid of the said master and keepers, or wardens and commonalty of the mystery (a) or art of stationers of the city of *London*, may be adjudged as good, and that the said *Benjamin* to that bill may answer, &c.

Demurrer.
(a) The original is [five]

And the said *Benjamin* says, that the plea aforesaid by the said *Benjamin* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to quash the said bill of the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*: Which said plea, and the matter therein contained, he the said *Benjamin* is ready to verify and prove, as the court, &c. And because the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London* to the plea aforesaid do not answer, nor the same hitherto any way deny, he the said *Benjamin*, as before, prays judgment of the bill aforesaid, and that that bill may be quashed: But because the court of the said Lady the Queen now here are not yet advised to give their judgment of and upon the premisses, day is given to the said parties before the Lady the Queen at *Westminster* until *Saturday* next after the *Obave* of the purification of the blessed virgin *Mary*

Joinder.

[5]
Continuance.
Salk. 707,
776.

Abatement.

*Respondens
ouster.
Pract. Reg. 1.*

to hear their judgment of and upon the premisses aforesaid, because the court of the said Lady the Queen now here thereof not yet, &c. At which day before the Lady the Queen at *Westminster* come as well the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* aforesaid, as the said *Benjamin* by their attornies aforesaid: Whereupon all and singular the premisses being seen, and by the court of the said Lady the Queen now here more fully understood, and mature deliberation being thereon had, because it seems to the court of the said Lady the Queen now here, that the said plea by the said *Benjamin* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to quash the bill of the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* aforesaid: Therefore it is considered that the said *Benjamin* do farther answer to the same bill, &c. And upon this the said *Benjamin* by his attorney aforesaid comes and defends the force and injury, when, &c. And prays oyer of the writing aforesaid, and to him it is read, &c. And pleads in bar.

Broughton Bart.

*Abatement;
for that the
defendant is a
Baronet, not
Knight and
Baronet.
Pract. Reg. 2. 3.
Salk. 50. 6.*

AND the said *John Broughton* by *J. L.* his attorney comes and defends the force and injury, &c. and prays judgment of the writ aforesaid, because he says, that he the said *John*, at the time of the impetration of the original writ aforesaid, and from thence continually afterwards hitherto was and yet is a Bart. only, and not a Knt. and Bart. without that, that the said *John Broughton* now is, or the day of the impetration of the original writ aforesaid was a Knt. and Bart. as by the said writ above is supposed: And this the said *John* is ready to verify: Wherefore he prays judgment of the writ aforesaid, and that that writ may be quashed, &c.

Fritb and Herd.

*Plea, that the
defendants are
administrators,
and not execu-
tors.
Salk. 296. 3.
Pract. Reg. 7.*

AND the said *Robert* by *J. L.* his attorney comes and defends the force and injury, &c. and says, that the said *John Herd*, the first day of *December* in the year of our Lord 1694, at *London* aforesaid in the parish and ward aforesaid, died intestate, after whose death administration of all and singular the goods and chattels, rights and credits which were the said *John Herd's* at the time of his death, by *Charles Hedges* Knt. doctor of laws, of the reverend father in Christ *Henry* by divine permission Lord bishop of *London* in the parts of *Essex* and *Hertford* commissary and sequestrator general lawfully constituted, to whom the commission of the administration aforesaid did of right belong, the eighth day of the month of *February* in the year of our Lord 1694, at *London* aforesaid in the parish and ward aforesaid, to the same *Robert Herd* in due form of law was committed; in which case the

Abatement.

† 5

the said *Edward* and *Margaret* ought to name the said *Robert Herd* administrator of the goods and chattels of the said *John Herd*, and not executor of the testament of the said *John Herd*: And this he is ready to verify: Wherefore he prays judgment of the bill aforesaid, and that that bill may be quashed, &c.

Newcome and Bambridge.

AND the said *Richard* by *T. H.* his attorney comes and defends the force and injury, &c. and prays oyer of the writing aforesaid, and to him it is read in these words, *Noverint universi per presentes me Richardum Newcome de Castle Dennington in Com' Leicest' Yeom' teneri & firmit' obligari Johanni Bambridge de Lockington in com' Leicest' Armig' in ducent' & quinquagint libris bon' & legalis monete Angl' solvend' eidem Johanni aut suo certo attorn' executor' vel administrator' suis ad quam quidem solutionem bene & fidelit' faciend' obligo me heredes executor' & administrator' meos firmit' per presentes sigillo meo sigillat' dat' decimo die Decemb' anno regni Domini nostri Jacobi secundi Dei gra' Angliæ Scot' Franc' & Hibern' Regis fidei defens', &c. secundo annoq' Domini 1686. He prays likewise oyer of the condition of the same writing, and to him it is read in these words, The condition, &c. which being read and heard, the same *Richard* prays judgment of the bill aforesaid, because he says, that the said *John* by his bill above supposes that the said *Richard* owes the said *John* 250*l.* where in truth there are no such words in the said writing containing and warranting those words in the declaration aforesaid specified: And this he is ready to verify: Wherefore he prays judgment of the bill aforesaid, and that that bill may be quashed, &c.*

By false Latin; oyer of the Bond.
Hob. 18, 19, 20.
Pract. Reg. 146.
Salk. 462.

Griggs and Smith.

[6]

AND *Carolinus Smith*, against whom the said *Richard Griggs* by his bill exhibited complains by the name of *Charles Smith* by *J. A.* his attorney comes and defends the force and injury, &c. and prays judgment of the bill aforesaid, because he says, that he was baptized by the name of *Carolinus*, and by the same name from the time of his baptism hitherto always was called and known; without that, that he the same *Carolinus* now is or ever was called or known by the name of *Charles*, as by the bill aforesaid above is supposed: And this he is ready to verify: Wherefore he prays judgment of the bill aforesaid, and that that bill may be quashed, &c.

Misnomer in the defendant's christian name.
Pract. Reg. 199.
Salk. 6. 712.

AND *William G. Esq;* against whom the said *Thomas* by his bill exhibited complains by the name of *William G.* in his proper person comes and defends the force and injury, &c. and prays judgment of the bill aforesaid, because he says, that he, the day of the exhibition of the bill aforesaid of him the said *Thomas*, and always before, was, and yet is an Esquire: And this he is ready to verify: Wherefore, for that the same *William* in the bill aforesaid of him the said *Thomas* is not named and impleaded by the

Misnomer in the defendant's title.
Salk. 7.
2 Keb. 824.
1 Vent. 151.
Rast. 108.
298.
Salk. 50. 5.
Stat. 1 H. 5. c. 5.

the name of *William G. Esq*; as he according to the form of the statute of additions in the names of defendants in such bills filed made and provided, ought to be named and impleaded, the same *William G.* prays judgment of the bill aforesaid, and that the bill aforesaid may be quashed, &c.

Woodhouse and Twyford.

Yet of *Easter* term. Witness *John Holt* Knt.

The grant of
the office of
a filazer of the
court of K. B.

BE it remembered, that *Wednesday* next after fifteen days of *Easter* that same term *John Holt* Knt. chief justice of the Lord and Lady the King and Queen, assigned to hold pleas in the court of the Lord and Lady the King and Queen before the King and Queen themselves, freely gave and granted to *James Woodhouse* Esq; the office of filazer in the court of the said King and Queen before the King and Queen themselves of the county of *Salop*; and, as it is usual, the said *James Woodhouse* to the said office of the county aforesaid is admitted, to have and to hold to him as his freehold for term of life, according to the custom of the court of the said Lord and Lady the King and Queen all times passed used and approved, and instantly the same *James Woodhouse*, as well the oath of his fidelity to the said Lord and Lady the King and Queen, according to the form of the statute in that case made and provided, as the corporal oath from henceforth well and faithfully to bear and behave himself in the same office, by him first taken as is accustomed, into the corporal possession of the same office put and instituted, to hold, occupy and have the same in form aforesaid, with the fees, wages and profits to the same office belonging and anciently due and accustomed, &c.

Roll 213.

Holt. Ventris.

That the defendant is a
filazer of the
K. B.
There need
not be any af-
fidavit, but a
copy of the re-
cord affixed
to the plea.
Salk. 1, 2, 3.

And the said *James* in his proper person comes and defends the force and injury, and says, that in *Easter* term in the fifth year of the reign of the Lord and Lady *William* and *Mary* late King and Queen of *England*, &c. to wit, on *Wednesday* next after fifteen days of *Easter* that same term, *John Holt* Knt. chief justice of the said late King and Queen assigned to hold pleas in the court of the said late King and Queen before the King and Queen themselves, freely gave and granted to the said *James Woodhouse* the office of filazer in the court of the said late King and Queen before the King and Queen themselves, of the county of *Salop*, and then and there the said *James Woodhouse* to the same office of filazer of the county of *Salop* aforesaid admitted, to have and to hold to him as his freehold for the term of his life, according to the custom of the said court of the said late King and Queen at all times then past used and approved, and instantly the said *James Woodhouse* as well the oath of his fealty to the said late King and Queen according to the form of the statute in that case made and provided, as the corporal oath from thenceforth well and faithfully to bear and behave himself in the same office, by him first taken

as was accustomed, into the corporal possession of the same office, put and instituted, to hold, occupy and have the same in form aforesaid, with the fees, wages and profits to the same office belonging and anciently due and accustomed, &c. as by the record of the said grant and admission in the court of the now Lord the King before the King himself now remaining manifestly appears; by virtue of which grant and admission he the said *James* was filazer of the said court of the said King and Queen before the King and Queen themselves, and the day of the impetration of the original writ aforesaid was and yet is filazer of the said court of the said Lord the King before the King himself, as is aforesaid. And the said *James* farther says, that from time immemorial such filazers of the same court of the said Lord the King here according to the custom of the same court from the whole time aforesaid hitherto used and approved in the same court only, have been accustomed and ought to be impleaded in all pleas personal at the suit of any subject of the said Lord the King and his predecessors Kings and Queens of this realm, by bill in the court of the said now Lord the King before the King himself exhibited against such filazers present to the same court in proper person: And this he is ready to verify: Wherefore he prays judgment if the court of the Lord the King here will or ought to take farther cognizance of the said plea against him the said *James*, &c.

[7]

Edw. Whitaker.

Brown and Deeble.

AND now at this day, to wit, *Wednesday* next after 15 days of *Easter* this same term, to which day the said *Hierom*, saving to himself all and all manner of exceptions as to the bill aforesaid of the said *Edward*, had licence to imparl to the said bill and then to answer, &c. before which day the Lady Queen *Mary* died, before the said Lord the King at *Westminster* comes as well the said *Edward*, by his attorney aforesaid, as the said *Hierom* by *R. S.* his attorney; and the said *Hierom* defends the force and injury, &c. and says, that he the said *Hierom* ought not to be compelled to answer to the bill aforesaid, because he says, that the said *Edward* otherwise, to wit, in *Trinity* term last past, in the court of the now Lord the King and of the late Lady Queen *Mary* of the Bench impleaded the said *Hierom* in a certain plea of trespass on the case, and for the same cause in the declaration aforesaid abovementioned, as by the record thereof in the same court remaining appears; and that the parties aforesaid to and in the plea in the said court of Bench, and the said *Edward Brown* now plaintiff, and he the said *Hierom Deeble*, are the same persons and not other nor divers, and that the plea aforesaid in the said court of Bench yet remains undetermined: And this he is ready to verify: Wherefore he prays judgment if he ought to be compelled to answer to the said bill, &c.

Special imparlance.

Demise of Q. *Mary*.

Plea, Another action pending in the Common Pleas. Salk. 715.

And

Repl. No such
record.

And the said *Edward* says, that by any thing by the said *Hierom* above in pleading alledged, he the said *Hierom* to the declaration of the said *Edward* aforesaid ought to be compelled to answer, because he says there is not any such record of the impleading of the said *Hierom* at the suit of the said *Edward* in the said court of the Lord the King of the Bench remaining, as the same *Hierom* above in pleading hath alledged: And this he is ready to verify: Wherefore he prays judgment, and that the said *Hierom* to the bill of the said *Edward* aforesaid may answer, &c.

Dade at the suit of Bickford.

That another
sealed the deed
jointly with the
defendant.

AND the said *Thomas Dade*, by *John Lilly* his attorney, comes and defends the force and injury, &c. and prays judgment of the bill aforesaid, because he says, that one *Peter Albert* the same 26 day of *August* in the year of our Lord 1699 at *London* aforesaid in the parish and ward aforesaid subscribed, sealed, and as his deed delivered to the said *John Bickford* the said charter-party indented of affreightment in the bill aforesaid abovementioned, and that the same *Peter Albert*, and the said *Thomas* by that same charter-party indented of affreightment jointly covenanted, granted and agreed, to and with the said *John Bickford*, his executors, administrators and assigns, in manner and form as in the bill aforesaid of the said *John* above is recited: Wherefore for that the said *Peter Albert* is not named in the bill aforesaid, the same *Thomas Dade* prays judgment of the bill aforesaid, and that that bill may be quashed, &c.

Plea.

Another action depending for the same cause in the same court.

Repl. *Griffin*
and *Dominee*.
No such record
in the same
court.

AND the said *Edward Dominee* says, that by any thing by the said *Owen Griffin* above in pleading alledged, the bill aforesaid of the said *Edward* now filed ought not to be quashed, because he says, that there is not any such record of the bill aforesaid in the plea aforesaid specified in the same court of the said now Lady the Queen before the Queen herself filed, or of record remaining, as the said *Owen* above in pleading hath alledged: And this he is ready to verify: Wherefore he prays judgment, and that the bill aforesaid of the said *Edward* now filed may be adjudged good, and the said *Owen* may answer thereto, or in default thereof his damages by reason of the premisses to be adjudged to him, &c.

[8]

Rejoinder,
that there is
such record.

And the said *Owen* says, that there is such a record of the bill aforesaid in the plea aforesaid of the said *Owen* above specified in the said court of the said Lady the Queen before the Queen herself, to wit, at *Westminster* aforesaid, of record filed, as he the same *Owen* above in pleading hath alledged, as appears upon the file of bills of the said *Hilary* term last past in the plea aforesaid

last mentioned of record filed: And this he is ready to verify by that record, and prays that the term and file of bills by the court of the said Lady the Queen now here may be seen and inspected: But because the court of the said Lady the Queen now here to give their judgment of and upon the premises are not yet advised, day therefore is given to the parties aforesaid, before the Lady the Queen at *Westminster*, until ----- next after ----- to hear their judgment of and upon that issue, because the court of the said Lady the Queen now here thereof not yet, &c.

Continuance.

And the said *Owen* says, that the plea aforesaid by the said *Edward* above in replying pleaded, and the matter in the same contained, are not sufficient in law to compel the said *Owen* to answer to the aforesaid bill of the said *Edward*, to which the said *Owen* hath no necessity, nor is by the law of the land bound in any manner to answer: And this he is ready to verify: Wherefore for default of a sufficient replication of the said *Edward* in this behalf, the same *Owen* as before prays judgment of the bill aforesaid, and that that bill may be quashed, &c.

Demurrer.
Salk 218,
220. 93, 94

And the said *Edward* says, that the plea aforesaid by the said *Edward* in manner and form aforesaid above in replying pleaded, and the matter in the same contained, are good and sufficient in law to compel the said *Owen* to answer to the bill of the said *Edward*, which said plea, and the matter therein contained, the same *Edward* is ready to verify and prove, as the court, &c. And because the said *Owen* to that plea doth not answer, nor hitherto any ways deny it, the same *Edward* prays judgment, and that the said bill of the said *Edward* aforesaid may be adjudged good, &c. and the said *Owen* may thereto farther answer, &c. or in default thereof his damages by reason of the premises to be adjudged to him, &c. But because the court of the said Lady the Queen now here to give their judgment of and upon the premises are not yet advised, day therefore is given to the parties aforesaid before the Lady the Queen at *Westminster*-----next after---to hear their judgment of and upon those premises, because the court of the said Lady the Queen now here thereof not yet, &c.

Joinder.

Frith and others at the suit of Kemp and others.

Force and injury, &c. and pray judgment of the declaration aforesaid, because they say, that the declaration aforesaid, and the matter therein contained, are not sufficient in law to maintain the action of the said *John*, *James*, and *Mary* thereof against the said *Richard* and *Cadogan* had, to which said declaration the same *Richard* and *Cadogan* have no necessity, nor are by the law of the land obliged in any manner to answer: And this they are ready to verify: Wherefore for want of a sufficient declaration in this behalf, the same *Richard* and *Cadogan* pray judgment of the declaration aforesaid, and that that declaration may be quashed, &c.

Demurrer in
abatement to a
declaration.
Salk. 220,
Pract. Reg. 4.

Joinder.

Continuance.

Judgment for
the plaintiffs.

Inquiry awarded.

[9]

*Scire fac' quare
executionem non
on error.
Plea.*

And the said *John, James and Mary* say, that the declaration aforesaid, and the matter in the same contained, are good and sufficient in law for the said *John, James and Mary* to maintain their action aforesaid thereof against the said *Richard and Cadogan* had; which said declaration, and the matter in the same contained, the same *John, James and Mary*, are ready to verify and prove, as the court, &c. Wherefore for that the same *Richard and Cadogan* the matter aforesaid in the declaration aforesaid do not deny, nor thereto any way answer, the same *John, James and Mary* pray judgment, and their damages by reason of the premises to be adjudged to them, &c. But because the court of the said Lord the King now here to give their judgment of and upon the premises are not yet advised, day therefore is given to the parties aforesaid, before the Lord the King at *Westminster*, until *Wednesday* next after five weeks of *Easter*, to hear their judgment of and upon the premises, because the court of the Lord the King now here thereof not yet, &c. At which day before the Lord the King at *Westminster* come the parties aforesaid, by their attorneys aforesaid; whereupon all and singular the premises being seen, and by the court of the said Lord the King now here more fully understood and considered, and mature deliberation being thereon had, it seems to the court of the Lord the King now here, that the declaration aforesaid, and the matter in the same contained, are good and sufficient in law for the said *John, James and Mary* to maintain their action aforesaid thereof against the said *Richard and Cadogan* had: Wherefore the same *John Kemp, James Goodwin and Mary Perkins* ought to recover their damages against the said *Richard Smith and Cadogan Thomas* by reason of the premises aforesaid. But because it is unknown to the court of the said Lord the King now here what damages they the same *John, James and Mary* have sustained by reason of the premises; Therefore the sheriff of *Middlesex* is commanded, that he, by the oath of twelve good and lawful men of his bailiwick, diligently inquire what damages they the same *John, James and Mary*, as well by reason of the premises aforesaid, as for their costs and charges by them about their suit in this behalf expended have sustained, and send the inquisition which, &c. to the Lord the King at *Westminster*, on *Friday* next after the morrow of the holy *Trinity*, under the seal, &c. and the seals, &c. together with the writ of the said Lord the King to him therefore directed. The same day is given to the said *John, James and Mary* there, &c.

Carter and Mogg.

AND the said *Nathaniel*, being on the same day solemnly called, by *Thomas Callowe* his attorney likewise comes and prays judgment of the writ of *scire facias* aforesaid, because he says, that there are not fifteen days between the *teste* and return of the said writ of *scire facias* aforesaid: And this he is ready

ready to verify: Wherefore he prays judgment of that writ, and that the writ aforesaid may be quashed, &c.

And the said *Martin* says, that by any thing by the said *Nathaniel* above in pleading alledged, the said writ of the said *Martin* ought not to be quashed, because he says, that the plea aforesaid by the said *Nathaniel* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to quash the aforesaid writ of the said *Martin* against the before mentioned *Nathaniel*, to which said plea in manner and form aforesaid pleaded the same *Martin* hath no necessity, nor is by the law of the land obliged in any manner to answer: And this he is ready to verify: Wherefore for want of a sufficient plea of the said *Nathaniel* in this behalf, the same *Martin* prays judgment and his execution, according to the force, form and effect of the recovery aforesaid to be adjudged to him.

And the said *Nathaniel* says, that the plea aforesaid by the said *Nathaniel* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to quash the writ of the said *Martin* against the said *Nathaniel*: Which said plea, and the matter in the same contained, the same *Nathaniel* is ready to verify and prove, as the court, &c. And because the said *Martin* to that plea doth not answer, nor the same hitherto any way deny, the said *Nathaniel*, as before prays judgment, and that the said writ may be quashed, &c. But because the court of the Lord the King here to give their judgment of and upon the premisses are not yet advised, day therefore is given to the parties aforesaid before the Lord the King until----- wherefoever, &c. to hear their judgment of and upon the premisses, because the court of the said Lord the King now here thereof not yet, &c.

There are not fifteen days between the *cessa* and return. Demurrer to the plea.

This conclusion being in bar is a discontinuance; and if the defendant's plea be good, this conclusion will be fatal to the plaintiff. Joinder.

Crompt and ———

AND the said *John Crompt* in his proper person comes and defends the force and injury, and says, that he, long before the exhibition of the bill aforesaid of the said *Dorothy*, and at the same time, and continually afterwards was, and yet is an attorney of the court of the Lord the King of the Bench at *Westminster* in the county of *Middlesex*, as by the process under the seal of the same court to this plea annexed more fully appears; and that he divers pleas and affairs of divers and many liege subjects of the said now Lord the King in the same court of Bench aforesaid to be prosecuted and defended as their attorney doth there prosecute and defend: And the same *John* says, that he and all other attornies of the same bench, for their clients in the same court prosecuting and defending, by a laudable and ancient custom, and according to the law of this kingdom of *England* and the liberties and privileges of the same court of the bench aforesaid, from time immemorial used and approved, to answer before any justices or ministers of the Lord the King or other judges whatsoever in any court,

except

That the defendant is an attorney of the Common Bench.

Note; It must not be pleaded with *cessa*, &c. for that admits the jurisdiction of the Court as *taken* and as the court, &c. shall order.

Note; This plea will not be allowed now, unless pleaded as by process, &c. and the writ under seal annexed to the plea.

except before the justices of the Lord the King of the Bench aforesaid at *Westminster*, upon any pleas or complaints, (pleas of freehold and felony, and appeals, only except) against their wills ought not to be drawn or compelled, nor at any times past have been accustomed, according to the liberties and privileges of the said court of the Bench aforesaid, from the whole time aforesaid used and approved: and this he is ready to verify: Wherefore he prays judgment if he ought to be compelled to answer to the said *Dorothy* to the said plea here in court, &c.

Tho. Carthew.

Dobson against Shore.

Replication
upon a special
imparlance
continued.

[10]

W Hereupon the said *John Dobson*, saving to himself all and all manner of advantages, exceptions and allegations to the plea aforesaid of the beforementioned *John Shore*, *Samuel Astre*, *Thomas Barret*, *Richard Brown*, *John Lipps*, and *Richard Humphrey*, prays leave to imparl before the Lord and Lady the King and Queen at *Westminster* until *Wednesday* next after 15 days of *St. Hill*. and he hath it, &c. The same day is given the parties aforesaid there, &c. At which day before the said Lord and Lady the King and Queen at *Westminster* come as well the said *John Dobson* as the said *John Shore*, &c. by their attornies aforesaid; whereupon the said *J. D.* saving to himself as is aforesaid, farther prays leave to imparl thereto, &c. before the said Lord and Lady the King and Queen at *Westminster* until *Tuesday* next after the *Oclave* of the purification of the blessed *Mary*, and he hath it, &c. The same day is given to the parties aforesaid, &c. At which day before the said Lord and Lady the King and Queen at *Westminster* come as well the said *J. D.* as the said *J. S.* &c. by their attornies aforesaid, and the said *J. D.* says, that after the last continuance of the plea aforesaid, to wit, after the said *Wednesday* next after 15 days of *St. Hillary*, from which day the said plea was continued until this day, to wit, *Tuesday* next after the *Oclave* of the purification of the blessed virgin *Mary*, to wit, the tenth day of *February* in the year of our Lord 1689, the said *J. D.* from the sentence of excommunication aforesaid was and yet is absolved and released, and to the communion of *Christ's* faithful and the sacraments of the church restored. And the same *J. D.* produces here in court the letters patent of *G. O.* Doctor of Laws, of the court of *Canterbury* of the Arches *London* official principal lawfully constituted, testifying the said absolution, which letters patent follow in these words, to wit, *G. O.* Doctor of laws of the court of *Canterbury* of the Arches *London* official principal lawfully constituted, to all and singular rectors, vicars, chaplains, curates, clerks and learned men whomsoever in and throughout the whole province of *Canterbury* wheresoever appointed, greeting. Whereas it is shewn to us by appeal, on the part of our beloved in *Christ J. D.* of *Hamsey* in the county of *Sussex* and Arch-deaconry of *Lewes* and diocese of *Chichester*, that

Letters of
Absolution.

that altho' *T. B.* doctor of laws, commissary or official principal of the reverend father in God *Simon* by divine permission bishop of *Chichester*, in and throughout the whole archdeaconry of *Lewes* in the diocese of *Chichester*, or his surrogate, had some time since excommunicated the said *J. D.* for his contumacy in not appearing before the said doctor *Briggs*, or his surrogate, at a certain day, hour and place in that behalf before appointed, to answer *J. S.* clerk, rector of the rectory of *Hamsay* aforesaid, in a certain cause of subtraction of tithes and other ecclesiastical rights, and from the same excommunication, at the petition of the said *J. D.* personally appearing, and promising to obey the law and commands of the church in all things lawful and honest, had absolved, and to the communion of *Christ's* faithful had restored; and that *J. E.* clerk, surrogate of the said Dr. *B.* and *T. B.* deputy register of the said Dr. *B.* the letters of absolution in that behalf wrote afterwards respectively subscribed and sent out; nevertheless *J. L.* of *Lewes* in the county of *Sussex*, keeper of the seal of the said Dr. *B.* the judge from whom in this behalf it is appealed, altho' often lawfully requested, has refused and denied to put and affix the said seal to the said letters of absolution, to the great damage and prejudice of the said *J. D.* Wherefore the said *J. D.* thinking himself unlawfully hurt and aggrieved by the not putting and affixing the said seal to the said letters of absolution, and from every thing subsequent thereto, and fearing he may be greatly prejudiced hereafter from them to the court of *Canterbury* of the arches *London*, and us the official thereof hath appealed, and of the nullity and pravity of the premisses hath complained: We therefore proceeding in this appeal *ex superabundanti*, the said *J. D.* promise being first made by *John Hungerford* notary publick, his proctor for his obeying the law and commands of the church in all things lawful and honest, from the said sentence of excommunication until the first session of next *Easter* term have absolved, and to the communion of *Christ's* faithful have restored: We command you jointly and severally, that you by our authority forbid the said *T. B.* doctor of laws, the judge from whom it is as aforesaid appealed, and his register, the said *J. S.* and *J. L.* in particular, and all others whom the law require in this behalf to be forbidden in general, that they, or any of them, do not in any wise attempt, or cause or procure any thing to be attempted, to the prejudice of the party appealing pending the said appeal before us or our surrogate, or other competent judge in that behalf whatsoever undetermined, whereby the said party appellant may not have free liberty of prosecuting his said appeal, as shall be just on pain of the law. Cite therefore, or cause to be cited peremptorily, the said *John Lipps*, that he appear before us or our surrogate, or other competent judge in that behalf whatsoever, in the hall of the common inn of the lords of the arches in the parish of *St. Benedict* near *London-bridge* notoriously situated, and in the judicial place there, on the fourth day next after such citation to him in that behalf made, if it shall be a law-day, otherwise the law-day

[II]

then next following, at the usual hour of hearing causes there, to answer the said *John Dobson* in such his appeal, and farther to do and receive what shall be just in this behalf; commanding beside you the said rectors, vicars, chaplains, curates and clerks whomsoever, in and throughout the whole province of *Canterbury* wherever appointed, that you jointly and severally the said *John Dobson* from the said sentence of excommunication against him as above given and promulged until the first———of *Easter* term next by us absolved, and to the communion of Christ's faithful restored.

Fuller at the suit of Dovee.

A writ of error
pending in
the Exche-
quer chamber,
pleaded in a-
batement to
an action of
debt.

AND the said *James Fuller*, by *J. S.* his attorney, comes and defends the force and injury, &c. and prays judgment of the said bill of the said *Robert Dovee*, because he says, that after the rendition of the judgment aforesaid in the declaration aforesaid specified, and before the exhibition of the said bill of the said *Robert Dovee*, to wit, 29th day of *October* in the 7th year of the reign of the now lord the king, the said *James Fuller*, for the reversing of the judgment aforesaid, prosecuted out of the court of chancery of the said lord the king, the same court then being at *Westminster*, a certain writ of the said lord the king, to correct error in the record and process, as also in the rendition of that judgment, directed to the trusty and beloved of the said lord the king *John Holt*, knt. then and yet chief justice of the said lord the king, assigned to hold pleas before the king himself; by which said writ the said lord the king commanded the said lord chief justice, that if judgment thereon was then given, then he should cause to come the record and process of the said plea, with all things touching the same, before the justices of the common bench and the barons of the exchequer of the degree of the coif in the chamber of the exchequer of the said lord the king at *Westminster*, on *Wednesday* the 27th day of *November* then next following, that the said justices of the common bench and barons of the exchequer, the record and process being seen and examined might farther in that behalf cause to be done what of right, and according to the form of the statute in such case made and provided, should be to be done; by virtue of which said writ of error the said chief justice afterwards, to wit, the said 27th day of *November*, the record and process of the plea and judgment aforesaid, together with all things touching the same, before the justices of the said lord the king of the common bench and his barons of the exchequer of the degree of the coif into the chamber of the Exchequer aforesaid, at *Westminster* aforesaid transmitted, and the record and process of the judgment aforesaid there yet remain, and the said writ to correct error in the said court of the chamber of exchequer aforesaid at *Westminster* aforesaid yet depends undetermined; and the judgment aforesaid is as yet neither affirmed nor reversed, as by the record thereof in the same court of the chamber of

Abatement.

11

of exchequer aforesaid at *Westminster* aforesaid, before the said justices of the said lord the king of the common bench and barons aforesaid remaining, more fully is manifest and appears: and this the said *James Fuller* is ready to verify by the record, judgment and process aforesaid: Wherefore he prays judgment of the bill aforesaid, and that that bill may be quashed, &c.

Edw. Northey.

St. John Broderick.

Account.

[12]

Andrews against Thornton.

London, **N** *Athaniel Andrews* and *Thomas Lucas*, wardens of to wit. the parish-church of *St. Catherine Coleman-street,* *London,* complain of *Thomas Thornton* late warden of the parish-church aforesaid, in custody of the marshal, &c. in a plea that he render to them his reasonable account from the time that he was warden of the parish-church aforesaid, and receiver of the monies of the parish-church aforesaid, for this, to wit, that whereas the said *T. T.* from the 10th day of *April* in the year of our Lord 1675, until the first day of *April* 1676, at *London* aforesaid, to wit, in the parish, &c. aforesaid in the ward of *A. London,* was warden of the church aforesaid and receiver of the monies of the parish-church aforesaid for the time aforesaid, and the care and administration of the goods and money of the parish-church aforesaid for the time aforesaid had, and for the same time at *London* aforesaid in the parish and ward aforesaid, as warden of the said church, received by the proper hands of the said *T. T.* 100*l.* of lawful money of *England* of the money of the church aforesaid, to expend and lay out to the use of the parish-church aforesaid, and to render his reasonable account of the same to the said *N. A.* and *T. L.* wardens of the church aforesaid when he should be thereto required; nevertheless the said *T. T.* although often required, &c. that reasonable account to the said *N. A.* and *T. L.* or either of them hath not rendered, but that to the same *N. A.* and *T. L.* hitherto to render altogether has denied, and yet doth deny, to the damage of the said *N. A.* and *T. L.* 100*l.* And therefore they produce the suit, &c.

Account by the church-wardens against the late church-warden.
Cro. Jac. 234.
Pract. Reg. 267, 680.
30, 34.

And the said *T. T.* by *A. B.* his attorney comes and defends the force and injury when, &c. and prays judgment of the bill aforesaid, because he says that one *T. S.* together with the said *T. T.* 10th day of *April* 1675, in the bill aforesaid mentioned, was warden and receiver of the monies, and had the care and administration of the goods and chattels of the church aforesaid for the time aforesaid;

Abatement.
Another was warden with the defendant.

Traverse.

aforefaid; and that the faid T. S. is yet living, to wit, at London aforefaid in the parifh and ward aforefaid; without that, that the faid T. T. was warden and receiver of the monies, and had the care and adminiftration of the goods and chattels of the church aforefaid for that time by himfelf, as the faid N. and T. in the bill aforefaid above have declared: And this he is ready to verify: Wherefore for that the faid T. S. is not named in the bill aforefaid, the fame T. T. prays judgment of the bill aforefaid, and that that bill may be quafhed, &c.

Demurrer.

And the faid N. and T. fay, that by any thing by the faid T. T. above by pleading alledged, the faid bill of the faid N. and T. ought not to be quafhed, becaufe they fay, that the plea aforefaid by the faid T. T. for quafhing of the bill aforefaid above pleaded, and the matter in the fame contained, are not fufficient in law to quafh the faid bill of the faid N. and T. or to preclude the faid N. and T. from their action aforefaid againft the faid T. T. had: And this they are ready to verify: Wherefore for want of a fufficient plea in this behalf the fame N. and T. pray judgment, and that their bill aforefaid may be adjudged good, and that the faid T. T. to the bill aforefaid may answer, &c. And for caufes of demurrer in law to that plea, according to the form of the ftatute in fuch cafe thereof lately made and provided, they do fet down and to the court here exprefs thefe caufes following, to wit, for that the faid plea is incertain, and contains in it a negative pregnant, and becaufe the faid T. T. by that plea hath made a full defence, and traverses matter not traversable, and wants form, &c.

The caufes.
27 El. c. 5.
4 Anne, c. 16.

W. Thompson.

[13]

Turner and Turner.

Pafch. 13 W. 3.

Account againft
a bailiff and
guardian.

1 Ventr. 105.
Salk. 9.

Derby, **C**harles Turner, gent. complains of John Turner, gent. in cuftody of the marfhall, &c. in a plea that he render to him his reasonable account from the time that he was guardian of the faid Charles, as alfo from the time that he was a bailiff of the faid Charles at Sandwicke in the parifh of Alfreton in the county aforefaid, for this, to wit, that whereas by the common council of the kingdom of the lord the king of England it is provided, that the guardians of the lands and tenements which are held in focage of the heirs of thofe lands and tenements, when they fhall come to their full age, fhall render their reasonable account of the iffues from thofe lands and tenements arifing from the time that they had the cuftody thereof by reafon of the minority of the faid heirs, the faid John his reasonable account of the iffues arifing from the lands and tenements of the faid Charles, to wit, of 2 meffuages, 3 cottages, 5 gardens, and 80 acres of land, 30 acres of meadow, 80 acres of paffure, and 30 acres of wood, with the appurtenances in Sandwicke aforefaid in the parifh of Alfreton aforefaid in the county

county aforesaid, the wardship of which premisses the said *John* had, to wit, from the 6th day of *January* in the year of our Lord 1684 to the 20th day of *July* in the year of our Lord 1691, (the same *Charles* by all the same time being under the age of 14 years) and for all the same time had received the issues and profits of the messuages and tenements aforesaid, altho' often requested, &c. to the same *Charles* hath not render'd, but the same to him hitherto to render hath refused, and yet doth refuse. And whereas also the said *John* afterwards, to wit, the 20th day of *July* in the year of our Lord 1691 aforesaid at *Sandwicke* aforesaid in the parish of *Alfreton* aforesaid, in the county aforesaid, was bailiff of the said *Charles* of 2 messuages, 3 cottages, 5 gardens, and 80 acres of land, 30 acres of meadow, 80 acres of pasture, and 30 acres of wood, with the appurtenances in *Sandwicke* aforesaid in the parish of *Alfreton* aforesaid in the county aforesaid, from the said 20th day of *July* in the year of our Lord 1691 to the 7th day of *October* in the year of our Lord 1698, and the yearly profits thereof for all the same time received and had, to render his reasonable account thereof to the same *Charles* when he should be thereto requested: Nevertheless the said *John* altho' often requested, &c. that reasonable account to the same *Charles* hitherto hath not rendered, but the same to him hitherto to render altogether hath refused, and yet doth refuse to the damage of the said *Charles* 1500 l. And therefore he produces the suit, &c.

Tawdin and Lavie.

Midd' **J**ames Tawdin the younger and James Frontin executors of the last will and testament of James Tawdin the elder deceased, complains of Henry Lavie merchant, being in the custody of the marshal of the *Marshalsea* of the lord the king, before the king himself, in a plea that he render to them a reasonable account from the time that he was bailiff of the said James Tawdin the elder, and receiver of the money of the said James in his life-time, at *Westminster* in the county aforesaid, for this, to wit, that whereas the said Henry from the 10th day of *May* in the 31st year of the reign of the lord Charles the second now king of *England*, &c. until the 30th day of *September* in the 32d year of the reign of the said now lord the king, at *Westminster* in the county aforesaid, was bailiff of the said James the testator in his life time, and for all the same time had the care and administration of divers goods and chattels of the said James Tawdin the elder, to wit, of two hundred thousand pounds of pewter, thirty firkins of stub nails, two hundred and twenty-four pounds of spelter, forty thousand pounds of lead, and five hundred and fifty pounds of tume glafs, to the value of 3000 l. to wit, at *Westminster* aforesaid in the county aforesaid, to merchandize and make profit thereof for the said James Tawdin the elder, and a reasonable account thereof to the said James the

Account by an executor of a merchant against his factor as bailiff.

Bailiff and receiver to the testator.

He had the administration of the goods of the testator.

The value.

To merchandize and make profit

testator,

Receipt of the
money.

[14]

testator, when he should be thereunto required, to render, and receiver of the monies of the said *James Tawdin* the elder, for the whole time aforesaid, and for the same time did receive of the monies of the said *James Tawdin* the testator at *Westminster* aforesaid, by the hands of *Peter Pontoise* 113*l.* 5*d.* and there by the hands of *Peter Chabot* 9*l.* and there by the proper hands of the said *Henry Lavie* 96*l.* of lawful money of *England*, to render a reasonable account thereof to the said *James* the testator, when he should be thereunto required: Nevertheless the said *Henry Lavie*, although often required, &c. that reasonable account to the said *James Tawdin* the elder in his life-time, or to the same *James Tawdin* the younger and *James Frontin*, or either of them, after the death of the said *James Tawdin* the testator, hath not rendered, but that to the said *James* the testator, and to the said *James*, now one of the plaintiffs, and *James Frontin*, after the death of the said *James* the testator, or to either of them, to render altogether hath refused, and that to the said *James Tawdin* the younger, and *James Frontin*, and to either of them, yet to render doth refuse, to the damage of the said *James Tawdin* the younger and *James Frontin* 10,000*l.* And therefore they produce the suit, &c. And the same *James Tawdin* the younger, and *James Frontin*, produce here in court the letters testamentary of the said *James Tawdin* the testator, by which it sufficiently appears to the court here, that the said *James Tawdin* the younger and *James Frontin* are executors of the testament of the said *James Tawdin* the elder, and thereof have the administration, &c.

Action on the case.

Tomkins against Roberts.

Assumpsit for
wines sold and
delivered.
Pratt Reg.
109, 120.

Note; on this
count the plain-
tiff must prove
the express price
agreed on.

Breach.

M.da' **M**artin *Tomkins* complains of *Thomas Roberts* to wit. **M** in custody of the marshal, &c. for that, to wit, that whereas the said *Thomas* 30 day of *September* in the 12th year of the reign of the Lord *William* the third now king of *England*, &c. at *Westminster* in the county aforesaid, was indebted to the said *Martin* in 50*l.* of lawful money of *England*, for wines by him the said *Martin* to the same *Thomas*, and at his special instance and request, before sold and delivered; and the said *Thomas* so therein being indebted, he the same *Thomas* in consideration thereof afterwards, to wit, the day, year and place aforesaid, assumed upon himself, and to the same *Martin* then and there faithfully promised, that he the same *Thomas* the said 50*l.* with interest to the same *Martin*, when thereunto afterwards he should be requested, would well and faithfully pay and content: Nevertheless the said *Thomas* his promise and assumption aforesaid in form aforesaid made not regarding, but contri-
ving

ving and fraudulently intending him the said *Martin* of the said 50*l.* with the interest thereof in this behalf craftily and subtilly to deceive and defraud, the said 50*l.* with the interest thereof to the same *Martin* hath not yet paid, nor him for the same hitherto in any wise contented, altho' the same *Thomas* afterwards, to wit, the first day of *May* in the 13th year of the reign of the said now lord the king, and often after at *Westminster* aforesaid in the county aforesaid, by the same *Martin* to do it was requested, but the same to him hitherto to pay, or therefore in any wise to content, hath altogether refused, and yet doth refuse. And whereas also that the said *Martin* afterwards, to wit, the first day of *October* in the 12th year aboveaid, at *Westminster* aforesaid in the county aforesaid, at the special instance and request of him the said *Thomas*, had sold and delivered to him the said *Thomas* other wines; the same *Thomas* in consideration thereof afterwards, to wit, the same day, year and place last mentioned, assumed upon himself, and to the said *Martin* then and there faithfully promised, that he the said *Thomas* so much money, as he the said *Martin* for the wine last mentioned should reasonably deserve to have, to the same *Martin*, when thereto afterwards he should be requested, would well and faithfully pay and content: And in fact the same *Martin* says, that he for the wine last mentioned reasonably deserved to have of the said *Thomas* 60*l.* of like lawful money of *England*; and thereof the said *Martin* afterwards, to wit, the same day, year and place aboveaid, to the same *Thomas* gave notice: Nevertheless the said *Thomas* his promise and assumption aforesaid last mentioned not regarding, but fraudulently intending the same *Martin* of the said 60*l.* in this behalf craftily and subtilly to deceive and defraud, the said 60*l.* or any penny thereof to the said *Martin* hath not yet paid, altho' often requested, &c. but the said *Thomas* the same to him hitherto to pay, or for the same in any wise to content, hath altogether refused, and yet doth refuse, to the damage of the said *Martin* 60*l.* And therefore he produces the suit, &c.

On this count
the delivery only.

Averment.
Pract. Reg.
155, 157.

Breach.
N. B. The damage must be the same as in the writ, or the bail are discharged.

Page against *Morgan* and another.

The city of *Bristol*, **T** *Thomas Page* complains of *George Morgan* and *Samuel Weekes* in the custody of the marshal, &c. for this, to wit, that whereas the said *George* and *Samuel* the first day of *November* in the year of our Lord 1699, at the city of *Bristol* in the county of the same city, were indebted to the same *Thomas* in 4*l.* of lawful money of *England*, for divers goods and merchandizes by him the said *Thomas* to the same *George* and *Samuel*, and at the special instance and request of them the said *George*, and *Samuel* before that time there sold and delivered; and the same *George* and *Samuel* so therein being indebted, the same *George* and *Samuel* then and there in consideration thereof assumed upon themselves, and to the same *Thomas* then and there faithfully promised, that they

Assumpsit against two defendants for goods sold and delivered.
Salk. 710.

[15]

Action on the case.

Quantum meruit.
Averment.

Indeb' assump'
for work done.

Quant' Mer'.

Averment.

Breach

the said *George* and *Samuel* the said 4 l. to the same *Thomas*, when thereunto afterwards they should be requested, well and faithfully would pay and content: And whereas also the said *Thomas* afterwards, to wit, the same day and year abovesaid, at the city of *Bristol* abovesaid in the county of the same city, at the special instance and request of them the said *George* and *Samuel*, had sold and delivered to the same *George* and *Samuel* divers other goods and merchandizes, the same *George* and *Samuel* in consideration thereof afterwards, to wit, the same day, year and place last mentioned, assumed upon themselves, and to the said *Thomas* then and there faithfully promised, that they the same *George* and *Samuel* so much money, as he the said *Thomas* for the goods and merchandizes last mentioned should reasonably deserve to have, to the said *Thomas*, when thereunto afterwards they should be requested, well and truly would pay and content: And in fact the said *Thomas* says, that he for the goods and merchandizes abovesaid last mentioned reasonably deserved to have of the said *George* and *Samuel* other 4 l. of like lawful money of *England*, and thereof the said *Thomas* afterwards, to wit, the same day, year and place abovesaid, to the same *George* and *Samuel* gave Notice: And whereas also the said *George* and *Samuel* afterwards, to wit, the same day and year abovesaid, at the city of *Bristol* abovesaid in the county of the same city, were indebted to the same *Thomas* in other 4 l. of like lawful money of *England*, for work and labour by him the said *Thomas* for the same *George* and *Samuel* and at their special instance and request before there done and performed; and the said *George* and *Samuel* then and there in consideration thereof assumed upon themselves, and to the said *Thomas* then and there faithfully promised, that they the same *George* and *Samuel* the said 4 l. last mentioned to the same *Thomas*, when thereunto afterwards they should be requested, well and faithfully would pay and content: And whereas also the said *George* and *Samuel* afterwards, to wit, the same day and year abovesaid, at the city of *Bristol* abovesaid in the county of the same city, in consideration that the said *Thomas* at the like special instance and request of the said *George* and *Samuel* had done and performed certain other work and labour for the said *George* and *Samuel*, they the same *George* and *Samuel* assumed upon themselves, and to the same *Thomas* then and there faithfully promised, that they the same *George* and *Samuel* as much money, as he the said *Thomas* for the work and labour abovesaid last mentioned should reasonably deserve to have to the same *Thomas*, when thereunto afterwards they should be required, well and faithfully pay and content: And the same *Thomas* in fact says that he the same *Thomas*, for the work and labour abovesaid last mentioned reasonably deserved to have of the same *George* and *Samuel* other 4 l. of like lawful money of *England*, whereof the same *George* and *Samuel* then and there had notice: And whereas also (the other count was for money laid out and expended by the plaintiff for the defendants): Nevertheless the said *George* and *Samuel* their several promises and assumptions not regarding,

regarding, but contriving and fraudulently intending the said *Thomas* of the said several sums of money in this behalf craftily and subtilly to deceive and defraud, the said several sums of money or any penny thereof to the said *Thomas*, altho' often required, &c. have not yet paid, nor has either of them paid, but the same to him hitherto to pay altogether have refused, and yet do refuse, to the damage of the said *Thomas* 20 l. And therefore he produces the suit, &c.

Chifwell against Baguley. Easter 7th of the Queen.

London, **R**ichard Chifwell the younger, of London merchant, complains of *William Baguley* in the custody of the marshal, &c. for this, to wit, that whereas the same *Richard* the 11th day of *February* hereafter mentioned, as also long before, was a merchant at *London* aforesaid, residing and using and having commerce with merchants and other persons in divers things and merchandizes amounting to great sums of money, to wit, at *London* aforesaid in the parish of *St. Michael Bassishaw* in the ward of *Bassishaw*, and thereby the same *Richard* great gain and profit acquired and gained: Nevertheless the said *William* of the premises not ignorant, but wickedly and maliciously intending, contriving and proposing the said *Richard*, under the colour and pretence of process of law, unduly and unjustly to vex, aggrieve, oppress and impoverish, and the said *Richard* without any just or reasonable cause to be imprisoned, and in prison to cause to be detained, and the friends and neighbours of the said *Richard* from becoming bail for the same *Richard* to deter and divert, to the intent that the said *Richard* should be detained in prison for want of bail, and so of his liberty might wrongfully and without any cause be spoiled and deprived, and the said *Richard* in transacting his lawful business and affairs to hinder, and in his credit and estate unjustly to lessen, damnify and destroy, the said *William Baguley*, 10th day of *February* in the fifth year of the reign of the lady *Anne* now queen, &c. at *London* aforesaid in the parish of *St. Michael Bassishaw* aforesaid in the ward of *Bassishaw* aforesaid, maliciously and without any probable cause of action, at the court of the said lady the queen before *Robert Bedingsfield* knt. mayor of the city of *London* aforesaid in the chamber of the *Guild-hall* of the said city, situate in the parish and ward aforesaid, then and there held according to the custom of the city aforesaid in the same city time out of mind used, affirmed in the same court his bill original against the same *Richard Chifwell* at the suit of the said *William Baguley*, in a plea of trespass on the case, to the pretended damage of the said *William Baguley* 1000 l. And thereupon it was in such manner proceeded in the same court, that afterwards, to wit, 11th day of *February* aforesaid in the year aforesaid, at *London* aforesaid, to wit, at the parish

Case f. being the plaintiff in the court of the mayor of *London*, to the pretended damage of 1000 l. having no cause of action.

Salk. 15, 21, 456, 727. Pract. Reg. 23.

Action on the case.

rish and ward aforesaid, the said *William Baguley*, by virtue of a precept of the said mayor and aldermen in that behalf according to the custom of the city aforesaid to one of the serjeants and minister of the court aforesaid made, the said *Richard* to be taken, arrested and imprisoned, unjustly and maliciously caused and procured for the said pretended cause in the said original bill of the said *William* specified, and him the said *Richard Chiswell* in prison then and there for a long time, to wit, for the space of six hours, maliciously and unjustly caused to be detained, until the said *Richard Chiswell* for his delivery and discharge from the prison aforesaid was compelled to find and put in good and sufficient bail, to answer to the said *William Baguley* in the plea of his bill original aforesaid, and also the same *Richard* great sums of money for his delivery and discharge aforesaid to lay out and expend was obliged, by reason of the unjust and malicious arrest and imprisonment aforesaid, when in truth and in fact the said *Richard Chiswell*, at the said time of the affirmation of the original bill aforesaid, or at the time of the taking of him the said *Richard*, was no ways indebted to the said *William*, nor had the said *William Baguley*, at the same before mentioned times or either of them, any just or reasonable cause of action against the said *Richard Chiswell* as in the bill original aforesaid was pretended and expressed: and the said *William Baguley* at any time after hitherto in the said plea of his bill original aforesaid against the said *Richard Chiswell* hath never declared, nor the plea of his bill original aforesaid farther in any wise prosecuted; whereby the same *Richard Chiswell* says that he is prejudiced, and has damage to the value of 1000*l*. And therefore he produces the suit, &c.

Pack against Easterfield.

Kent, **J**ohn Pack complains of *Robert Easterfield* in the to wit. Custody of the marshal, &c. for this, to wit, that whereas on the 23d day of *October* in the year of our Lord 1699 at *East Malling* in the county aforesaid, a certain discourse was moved and had between the same *John Pack* and the said *Robert Easterfield* of and concerning the buying and selling of hops; and upon that discourse then and there it was agreed between them, that the same *Robert* should pay to the same *John* a guinea of lawful money of *England*, and that the same *John* thereupon should appoint at what price he the said *Robert* should buy of the said *John* or should sell to him, at the election of the said *Robert*, a cart-load of good hops, and that the same *John* should appoint the condition of those hops and the place and time of the delivery of the same hops, and that upon that appointment the same *Robert* should buy of the same *John* or sell to him, at the election of the said *Robert*, the said cart-load of good hops: And the same *Robert* afterwards, to wit, the same day and year at *East Malling* aforesaid, according to that agreement, paid to the same *John* the said guinea, and thereupon the same *John* assumed upon himself, and

Colloquium.

Assumpsit on
an agreement
to buy or sell
hops.

Pract. Reg.
111.

and to the same *Robert* then and there faithfully promised to perform that agreement in all things on his part to be performed, and in consideration thereof the said *Robert* assumed upon himself, and to the said *John* then and there faithfully promised, that he the same *Robert* would perform and fulfil that agreement in all things on his part to be performed and fulfilled: And the same *John* in fact says, that he the same *John* afterwards, to wit, the same day and year abovesaid, at *East Malling* abovesaid, in the presence and hearing of the said *Robert*, did appoint the condition abovesaid of a cart-load of good hops, to be hops well picked and well dried, and the price of the said cart-load of good hops to be 5*l.* 10*s.* a hundred for every hundred weight thereof, and that the said cart-load of good hops should be delivered between the 23*d* day of *October* in the year abovesaid and the 25*th* day of *March* then next following, at the key of one *John Rice* in *Newithe* in the parish of *East Malling* abovesaid in the county abovesaid, or at *Milhale* in the parish of *Aylesford* in the county abovesaid; and thereupon the said *Robert*, to wit, the same day and year abovesaid, at *East Malling* abovesaid in the county abovesaid, made his election to buy of the same *John* a cart-load of good hops abovesaid, well picked and well dried, at that rate and price, and 5*s.* in part of payment for the cart-load of good hops abovesaid then and there in hand to the same *John* paid: And the same *John* afterwards, and before the said 25*th* day of *March* in the year abovesaid, to wit, the fifth day of *March* in the year of our Lord 1699 abovesaid, at the said key of the said *John Rice* in *Newithe* abovesaid in the parish of *East Malling* abovesaid, delivered to the use of the said *Robert* a cart-load of good hops well picked and well dried, whereby the said *Robert* five pounds and ten shillings for every hundred weight of the said twenty hundred weight, the said five shillings in hand paid being deducted, in the whole amounting to one hundred and nine pounds and fifteen shillings, to the said *John*, according to the agreement abovesaid, ought to have paid: And whereas also the said *John* afterwards, to wit, the said twenty third of day of *October* in the year abovesaid, at *East Malling* abovesaid in the county abovesaid, at the special instance and request of the said *Robert* had sold and delivered to the use of the said *Robert* one other cart-load of hops well picked and dried, the said *Robert* in consideration thereof afterwards, to wit, the same day and year last abovesaid, at *East Malling* abovesaid in the county abovesaid, assumed upon himself, and to the said *John* then and there faithfully promised, that he the said *Robert* all such sums of money, as the said cart-load of hops last mentioned at the time of the sale and delivery thereof was reasonably worth, to the same *John* would well and faithfully pay and content: And the same *John* in fact says, that the said cart-load of hops last mentioned, at the said time of the sale and delivery of the same, was reasonably worth one hundred and ten pounds of like lawful money of *England*, to wit, at *East Malling* abovesaid, in the county abovesaid, whereof the said *Robert* afterwards, to wit, the same day, &c. abovesaid, there had notice: And whereas also the said *Robert* afterwards,

[17]

Action on the case.

to wit, the said twenty third day of *October* in the year aforesaid, at *East Malling* aforesaid in the county aforesaid, was indebted to the said *John* in other hundred and ten pounds of like lawful money of *England*, for another cart-load of hops to the same *Robert* by the said *John* before that time sold and to the use of the said *Robert* delivered; and so therein being indebted the said *Robert* afterwards, to wit, the same day and year aforesaid, at *East Malling* aforesaid in the county aforesaid in consideration thereof assumed upon himself, and to the same *John* then and there faithfully promised, that he the same *Robert* the said hundred and ten pounds last mentioned to the same *John* when he should be thereunto required, well and faithfully would pay and content: Nevertheless the said *Robert* his several promises and assumptions aforesaid not regarding, but contriving and fraudulently intending the same *John* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money or any penny thereof to the same *John* hath not paid, altho' to pay him them the same *Robert* by the said *John* was afterwards, to wit, the first day of *May* in the year of the Lord 1700, at *East Malling* aforesaid in the county aforesaid, required, but to pay him them hitherto hath altogether refused, and yet doth refuse, to the damage of the said *John* three hundred pounds. And therefore he produces the suit, &c.

Colepepyr Bart. against Tooke.

Assumpsit to
de iure: picked
hops of such
a growth.

Kent, **W** *William Tooke* late of *London* gent. was attached to wit. **W** to answer to *Thomas Colepepyr* bart. in a plea of trespass on the case: And whereupon the said *Thomas* by *Robert Saunders* his attorney complains, that whereas on the twentieth day of *August* in the eleventh year of the reign of the lord *William* the third now king of *England*, &c. at *Aylesford* in the county aforesaid, a certain discourse was had and moved between the said *William* and *Thomas* of and concerning the hops of the said *Thomas* then and there dried and bagged, and the hops of the said *Thomas* then and there picked, and the hops of the said *Thomas* then and there growing on the hop-ground of the said *Thomas* then and there in his occupation, and upon that discourse then and there, in consideration of one shilling by the said *William* to the same *Thomas* in hand paid and in part of payment, and also that the said *Thomas* would dry and bag all the hops of the said *Thomas* then and there picked, and also would pick, dry and bag all the hops of the said *Thomas* which then and there grew upon the hop-ground of him the said *Thomas* then and there in the occupation of him the said *Thomas*, and the hops which then were dried and bagged, and also the hops which then were picked and should be bagged, and also the hops which were then growing upon the said hop-ground then and there in the occupation of the said *Thomas* as aforesaid, should weigh off to the use of the said *William* at the *Talbot Inn* situate at *Southwark* in the county of *Surry*,

on or before the nativity of our Lord Christ then next following the said *William* then and there assumed upon himself, and to the said *Thomas* then and there faithfully promised, that he the said *William* the said hops there would accept, and would pay to the said *Thomas* the sum of eight pounds of lawful money of *England* for every hundred pounds thereof, and so according to the same rate for a less quantity thereof: And in fact the same *Thomas* says, that he the said *Thomas* afterwards, to wit, the sixth day of *December* in the eleventh year above said, at *Aylesford* aforesaid, bagged the hops which the said twenty-eighth day of *August* in the year above said were picked, and then and there picked, dried and bagged all the hops of him the said *Thomas*, which on the said twenty-eighth day of *August* in the year above said were growing upon the hop-ground of him the said *Thomas* then in his occupation, and the several hops aforesaid weighed off to the use of him the said *William* at the *Talbot Inn* situate in *Southwark* aforesaid, and that they amounted to eighty-seven hundred and twenty-one pounds, and that, deducting the said one shilling in hand paid, they amounted according to the rate aforesaid to the sum of seven hundred and thirteen pounds and nine shillings, and thereof the said *Thomas* then and there to the same *William* gave notice, and them to the said *William* there offered to deliver, and the same *William* then and there required to accept: Nevertheless the said *William* his promise and assumption aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same *Thomas* in this behalf craftily and subtilly to deceive and defraud, the said seven hundred and thirteen pounds and nine shillings to the same *Thomas* has not yet paid, nor him therefore hitherto any way contented, although the same *William* by the said *Thomas* to do it afterwards, to wit, the first day of *February* in the eleventh year above said, at *Maidstone* in the county aforesaid was required, but the said *William* the same to him yet to pay or therefore any way to content altogether hath refused, and yet doth refuse, to the damage of the said *Thomas* nine hundred pounds. And therefore he produces the suit, &c.

[18]

Hall and Stanley.

London, **D**aniel Hall complains of *Thomas Stanley* in the to wit. custody of the marshal, &c. for this, to wit, that whereas on the twenty second day of *August* in the twelfth year of the reign of the lord *William* the third now king of *England*, &c. at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheap*, a certain discourse was had and moved between the said *Daniel* and *Thomas* of and concerning hops of that year's growth in the county of *Essex*, and upon that discourse then and there, in consideration of one shilling by the said *Thomas* to the said *Daniel* in hand paid in part of payment and four pounds and nineteen shillings, abating only the said one shilling for every hundred weight of one cart-load of *Chapman's* hops of the growth

Assumpsit on a special agreement to deliver hops at a certain place.

of

of the county of *Essex* in the year abovesaid, to be paid on the delivery of those hops by the said *Daniel* to him the said *Thomas* at *Sturbridge* fair in the parish of *Barnewell* in the county of *Cambridge*, on the thirteenth day of *September* then next following by twelve of the clock of the same day, the said *Thomas* assumed on himself, and to the said *Daniel* then and there faithfully promised, that he the same *Thomas* the said one cart-load of hops at the place, day and hour abovesaid would accept, and then and there would pay to the same *Daniel* so much money as the said cart-load of hops would amount unto at the rate of four pounds and nineteen shillings, abating only the said one shilling before in hand paid: and in fact the same *Daniel* says that he afterwards, to wit, the said thirteenth day of *September* in the twelfth year abovesaid, by twelve of the clock of the same day, had a cart load of *Chapman's* hops of the growth of the county of *Essex* in the year abovesaid, at the said *Sturbridge Fair* in the parish of *Barnewell* abovesaid in the county abovesaid, and those hops then and there weighed, and that those hops amounted to twenty hundred weight, and the same *Daniel* was then and there ready to deliver the hops abovesaid to the said *Thomas* at the price abovesaid according to the agreement abovesaid: Nevertheless the said *Thomas* his promise and assumption abovesaid in form abovesaid made not regarding, but contriving and fraudulently intending him the said *Daniel* in this behalf craftily and subtilly to deceive and defraud, the said twenty hundred weight of hops amounting at the rate abovesaid to ninety eight pounds and nineteen shillings, abating the said one shilling before in hand paid, of the same *Daniel* then and there to receive and absolutely refused, nor the said ninety-eight pounds and nineteen shillings or any penny thereof to the same *Daniel* hath paid, nor him for the same hath any way contented, but to do it although often required, hath altogether refused, and yet doth refuse: And whereas also the said *Thomas*, on the fourteenth day of *September* in the twelfth year abovesaid, at *London* abovesaid in the parish and ward abovesaid, was indebted to the said *Daniel* in one hundred pounds of lawful money of *England* for hops by the said *Daniel* to the same *Thomas* at the special instance and request of him the said *Thomas* before that time there sold, and so therein being indebted, the same *Thomas* in consideration thereof assumed upon himself, and to the same *Daniel* then and there faithfully promised, that he the said *Thomas* the said 100*l.* to the same *Daniel*, when thereunto afterwards he should be required, well and faithfully would pay and content: Nevertheless the said *Thomas* his promise and assumption last mentioned in form abovesaid made not regarding, but contriving and fraudulently intending him the said *Daniel* in this behalf craftily and subtilly to deceive and defraud, the said 100*l.* or any penny thereof to the same *Daniel* hath not yet paid, nor him therefore hitherto any way contented, altho' the same *Thomas* by the same *Daniel* to do it was often required, but the said *Thomas* the same to him yet to pay, or therefore any way to content, hath altogether

Breach.

Assumpsit for
hops sold.

[19]

ther refused, and yet doth refuse, to the damage of the said *Daniel* 15*ol.* and therefore he produces the suit, &c.

Tooler against Archer.

London, **S**imon Archer late of *Chelmsford* in the county of *Essex*, yeoman, was attached to answer to *George Tooler* in a plea of trespass on the case, &c. And whereupon the same *George* by *B. T.* his attorney complains, why whereas on the first day of *October* in the year of the Lord 1700 at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, a certain discourse was had and moved between the same *George* and *Simon* of and concerning the buying and selling of hops, and upon that discourse it was then and there between them agreed, that the said *George* should sell to the same *Simon* a cart-load or twenty hundred weight of hops at the rate of six pounds for every hundred weight of those hops, the said hops to be of the next middle growth of the county of *Essex*, to wit, of the year of the Lord 1701, and to be delivered in *London* on the feast day of *St. Michael* the Archangel in the year last mentioned, of which said price the same *Simon* the day, year and place first mentioned in hand paid to the said *George* one shilling, and the said *Simon* the same day, year and place above first mentioned, in consideration that the said *George* had assumed upon himself, and to the same *Simon* had then and there faithfully promised, that he the same *George* that agreement in all things on his part to be performed well and faithfully would perform, assumed upon himself and to the same *George* then and there faithfully promised, that he the same *Simon* the agreement aforesaid in all things on his part to be performed well and faithfully would perform : And the same *George* in fact says, that he the same *George* afterwards, to wit, on the feast day of *St. Michael* the Archangel in the year of the Lord 1701 aforesaid, brought out of the county of *Essex* aforesaid twenty hundred weight of hops of the next middle growth after the agreement aforesaid, of the county of *Essex* aforesaid, and them on the same feast-day delivered at *London* aforesaid in the parish and ward aforesaid in a certain place there called *Leaden-hall* ; and thereof the said *George* the same day and year, at the parish and ward aforesaid, to the said *Simon* gave notice ; and the said *George* the said twenty hundred weight of hops in the said place called *Leaden-hall* then and there left, and the said twenty hundred weight of hops from thenceforth continually hitherto have remained ready to be carried away by the said *Simon* at his will : Nevertheless the said *Simon* his promise and assumption aforesaid not regarding, but contriving and fraudulently intending the same *George* in this behalf craftily and subtilly to deceive and defraud those hops to accept, or to the said *George* for the same according to his agreement aforesaid to pay altogether hath refused, and yet doth refuse, altho' to do this by the same *George* afterwards, to wit,

On an agreement to deliver hops of such a year's growth.

Action on the case.

wit, the same day and year aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, he was required, but the ſaid *Simon* the ſame hitherto to accept and him to pay both altogether reſuſed, and yet doth reſuſe, to the damage of the ſaid *George* 300 l. And therefore he produces the ſuit, &c.

Startup and Dodderidge.

Caſe by the occupier againſt the rector for not taking away tiſhe-hay ſet out.

Bellum, **R**obert *Startup* complains of *John Dodderidge*, clerk, in a plea of treſpaſs on the caſe, and there are pledges to proſecute, to wit, *John Doe* and *Richard Roe* : And whereupon the ſame *Robert* by *Edward Purfield* his attorney complains, that whereas the ſaid *John* 23d day of *June* in the third year of the reign of the lady *Anne* now queen of *England*, &c. and long before and continually afterwards hitherto was and yet is rector of the parochial church of *Whatlington* in the county of *Suſſex* and within the juriſdiction of this court : And whereas alſo the tiſhes of corn, grain and hay within the pariſh aforeſaid from time to time growing, renewing and ariſing are payable, and for time out of mind were payable to the rector of the church aforeſaid for the time being, and the proprietors of any corn, grain and hay within the pariſh aforeſaid growing, renewing and ariſing, always uſed, were accuſtomed and ought to divide, ſeparate, ſet out and leave a tenth of the corn, grain and hay from the nine parts thereof, to the uſe of the rector of the church aforeſaid for the time being ; which tiſhes ſo as aforeſaid divided, ſeparated, ſet out and left the rector of the church aforeſaid for the time being at his proper coſt and charge within a convenient time after the diviſion, ſeparation, ſetting off and leaving the ſaid tiſhes, and notice thereof to him given, was uſed and ought to carry away from the lands on which ſuch tiſhes grew, renewed and aroſe : And whereas alſo the ſaid *Robert* on the 24th day of *June* in the ſaid third year of the reign of our lady *Anne* now queen of *England*, &c. and long before and continually afterwards hitherto was and yet is poſſeſſor and occupier of a cloſe of land called *The King's Hill*, otherwiſe *Kingsland Meadow*, lying in *Whatlington* aforeſaid and within the juriſdiction aforeſaid, containing by eſtimation 18 acres ; and ſo thereof being poſſeſſed the ſame *Robert* afterwards, to wit, the 28th day of *June* in the year aboveſaid the graſs upon the ſaid 18 acres of land lying at *Whatlington* aforeſaid and within the juriſdiction of the court aforeſaid, growing, renewing and ariſing, mowed and into cocks then and there made and put ; and after the making of the ſame into cocks, the ſame *Robert* then and there a tenth of the ſame from the nine parts thereof in due manner divided, ſeparated, ſet out and left for the uſe of the ſaid *John* then and yet rector of the church aforeſaid : And alſo the ſame *Robert* thereof afterwards, to wit, the 29th day of *June* in the year aforeſaid at *Whatlington* aforeſaid and within the juriſdiction of the court aforeſaid, to the ſaid *John* being then and yet rector of the church

church aforesaid gave notice: Nevertheless the said *John* of the premisses not ignorant, but contriving and maliciously intending the said *Robert* to deprive and hinder from having and receiving the profits of the close aforesaid, the tenth of the hay aforesaid, to wit, five and twenty cocks of hay so as aforesaid divided, separated, set out and left for the tithe of the hay, from the said close did not carry away, but the said twenty five cocks of hay upon the close aforesaid for a long time, to wit, from the said 29th day of *June* until the 26th day of *August* then next following, permitted to stand and remain, whereby the same *Robert* the profit of the same close for the same time totally lost, to the damage of the said *Robert* 5 *l.* And therefore he produces the suit, &c.

Winter and Wiberg.

London, to wit: **C**atherine Wiberg late of London spinster, executrix of the testament of *Thomas Wiberg* deceased, was attached to answer unto *George Winter* in a plea of trespass on the case, &c. And whereupon the same *George* by *Richard H.* his attorney complains, why whereas the said *Thomas* in his life-time, to wit, the first day of *April* in the year of the Lord 1717, at London aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, was indebted to the same *George* in 20 *l.* of lawful money of *Great Britain* for divers goods, wares and merchandizes of the said *George*, by him the said *George* to the same *Thomas* at the special instance and request of the said *Thomas* before that time sold and delivered; and so therein being indebted the said *Thomas* in his life time, in consideration thereof afterwards, to wit, the day and year abovesaid at London aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *George* then and there faithfully promised, that he the said *Thomas* in his life-time the said 20 *l.* to the same *George*, when thereto afterwards he should be required, well and faithfully would pay and content: Nevertheless the said *Thomas* in his life-time his promise and assumption aforesaid, so as aforesaid to the same *George* made, not regarding, the said sum of money, or any penny thereof, to the same *George* hath not paid; and the said *Catherine* and *Isabella Wiberg*, and *Charles Wiberg* coexecutors with the said *Catherine* of the will aforesaid of the said *Thomas*, which said *Isabella* and *Charles*, by process in the court of the Lord the King here by writ original by the said *George* against the said *Isabella* and *Charles* in the cause aforesaid lately obtained, are outlawed and waived, after the death of the said *Thomas*, and before the outlawry and waiving aforesaid against them promulged, altho' the said *Catherine* and the said *Isabella* and *Charles*, (who as aforesaid are outlawed and waived) to wit, on the first day of *March* in the year of the Lord 1718, and often afterwards, at London aforesaid in the parish and ward aforesaid, by the said *George* were required, the said sum of money have not paid, nor hath either of them paid, but the sum: to him hitherto

Assumpsit against
one executor for
goods sold the
testator after
outlawry of the
two other exe-
cutors:
Pract. Reg.
109, 120.

to pay have altogether refused, and the said *Catherine* doth yet refuse, to the damage of the said *George* 20 l. And therefore he produces the suit, &c.

[21]
Assumpsit by
original in
C. B. against
a peer of Ire-
land for money
lent.

Midd, to wit. **A**lmerick de Coursey late of *Isleworth* in the county aforesaid esq; baron of *Kinsale* in the kingdom of *Ireland*, was attached to answer unto *Francis Compton* knt. in a plea of trespass on the case, &c. And whereas the said *Francis* by *J. B.* his attorney complains, that whereas the said *Almerick*, on the first day of *May* in the year of the Lord 1700, at *Islington* in the county aforesaid, in consideration that the same *Francis*, at the special instance and request of the said *Almerick*, had before that time lent to the same *Almerick* 392l. 10s. of lawful money of *England*, assumed upon himself, and to the said *Francis* then and there faithfully promised, that he the same *Almerick* the said 392l. 10s. to the said *Francis*, when he should thereunto afterwards be required, well and faithfully would pay and content: Nevertheless the said *Almerick*, &c. (to) And therefore he produces the suit, &c.

Otheewise in
K. B.

Midd, to wit. **J**ohn Harris complains of *Frederick Williams* esq; Earl *Lifford* in the kingdom of *Ireland* in custody of the marshal, &c.

Otherwise a-
gainst a peer of
Scotland since
the Union.
6 Anne, c. 14.
Othe wife a-
gainst the son
of a peer of
England cal-
led up to the
house of Lords
by writ.

Midd, to wit. **T**HE right honourable *Thomas* earl of *Seaford* was attached to answer unto *John Dandi*, &c. (As in others).

THE right honourable *Thomas* lord *Osborne* was attached to answer unto *John Thomas* in a plea of trespass on the case, &c. And whereon, (as in others).

Note; A peer cannot be sued in B. R. by bill, by reason he is therein alledged to be in the custody of the marshal.

Matthew against Hodge.

Case against a
headborough
for billeting
soldiers on
the plaintiff
without consent.

Suffex, to wit. **T**homas Matthew the elder complains of *William Hodge* in the custody of the marshal, &c. for this, to wit, that whereas the said *William*, 26th day of *November* in the fourth year of the reign of the lord and lady *William* and *Mary* now king and queen of *England*, &c. at the parish of *St. Thomas* in *Cliva juxta Lewes* in the county aforesaid, (he the said *Thomas* then being a civil officer, to wit, a headborough for the half hundred of *Loxfield Dorset* in the county of *Suffex* aforesaid,) unjustly, unlawfully and maliciously billeted *Christopher Norman* and *Richard Taper*, two dragoons of the said lord and lady the king and queen, upon him the said *Thomas Matthews*, (he the said *Thomas* then being a subject of the lord and lady the king and queen of *England*, and an inhabitant in the parish, county and half hundred aforesaid,) without the consent of the said *Thomas* in that behalf had, which said

said dragoons, from the said twenty sixth day of *November* until the twentieth day of *May* then next following, against the will and without the consent of the said *Thomas*, by reason of the billeting aforesaid by him the said *William* upon him the said *Thomas* imposed were quartered against the form of the statute in that case made and provided; by pretence of which said billeting and quartering the same *Thomas* was hindered in the quiet use and occupation of his house aforesaid for the whole time aforesaid, and was compelled to expend divers sums of money for the support and maintenance of the dragoons aforesaid for the whole time aforesaid; whereby the said *Thomas* says that he is prejudiced, and has damage to the value of 40*l*. And therefore he produces the suit, &c.

Mansell and Stamford and others.

York, to wit. **E** *Edward Mansell*, vicar of the church of *Ecclesfield* in the county aforesaid, complains of *John Stamford* gent. *Edward Carver* clerk and *Hester Berkley* widow, executors of the testament and last will of *Thomas Wright* clerk, late vicar of the said church of *Ecclesfield* aforesaid, in the custody of the marshal, &c. for this, to wit, that whereas, according to the law and custom of this kingdom of *England* hitherto obtained and approved, all and singular prebendaries rectors and vicars of the same kingdom for the time being, are bound to repair and support all and singular the houses and buildings of their prebends, rectories and vicarages, and to leave the same to their successors repaired and supported: And if such prebendaries, rectors, and vicars, the houses and buildings aforesaid to such their successors as aforesaid have not left repaired and supported, but have permitted them to be unrepaired and dilapidated, the executors of the said prebendaries, rectors and vicars, after their deaths, out of the goods and chattels of the same testators are bound to satisfy to such successors so much money as is sufficient for the reparation and necessary rebuilding of those houses and buildings; And altho' the said *Thomas Wright*, late vicar of the church of *Ecclesfield* aforesaid, the houses and buildings of the said vicarage at the time of his death left unrepaired and dilapidated, so that 200*l*. are not sufficient to repair the said houses and buildings: And although the same *John*, *Edward Carver* and *Hester*, after the death of the said *Thomas*, to wit, the first day of *July* in the fifth year of the reign of the lord and lady *William* and *Mary* now king and queen of *England*, &c. at *Ecclesfield* aforesaid, were required to pay to the same *Edward Mansell* so much money as was sufficient for the reparation of the houses and buildings aforesaid: Nevertheless the same *John*, *Edward Carver* and *Hester*, in any wise to satisfy the same *Edward Mansell* for the irreparations and dilapidations aforesaid have a together refused, and yet doth refuse, to the damage of the said *Edward Mansell* 200*l*. And therefore he produces the suit, &c.

Case by the vicar against the executors of the last vicar for dilapidations.

[22]

Custom of *England* set forth.
Pract. Reg. 461.
Clergyman's Law 312.

Postea.

The Duke of Newcastle against Jermin.

Assumpsit on a
special agree-
ment for
wood.

Averment of
the delivery of
the wood.

Indebitatus for
wood.

Quantum meriti.

Not to wit. **T**HE most noble John duke of Newcastle complains of John Jermin gent. in the custody of the marshal, &c. for this, to wit, that whereas on the first day of May in the year of the Lord 1692, at Mansfield in the county aforesaid, a certain discourse was had and moved between the same duke and the said John Jermin of and concerning the sale of a great quantity of wood by the said duke to the said John Jermin, and upon that discourse it was then and there agreed between them that the same duke should sell and deliver to the said John Jermin 1500 cords of wood at the rate and price of 5s. 6d. for every cord of the said wood: And the same John Jermin, in consideration that the said duke then and there at the special instance and request of the said John Jermin did sell to the said John Jermin the said 1500 cords of wood at the said rate and price of 5s. 6d. for every cord of the said wood, and did assume upon himself and to the same John Jermin then and there faithfully promise, to deliver to the same John Jermin the same 1500 cords of wood, he the same John Jermin assumed upon himself, and to the said duke then and there faithfully promised, that he the said John Jermin 5s. 6d. for every cord of the said wood, which according to that rate amounted in the whole to 412l. 10s. to the same duke would well and faithfully pay and content: And the same duke in fact says, that he, giving credit to the promise and assumption of the said John Jermin in form aforesaid made, afterwards, to wit, the first day of October in the year of the Lord 1692 aforesaid, at Mansfield aforesaid in the county aforesaid, did deliver to the said John Jermin the said 1500 cords of wood: And whereas also the said John Jermin afterwards, to wit, the said first day of October in the year of the Lord 1692 aforesaid, at Mansfield aforesaid in the county aforesaid, was indebted to the said duke in 500l. for a certain other parcel of wood by the said duke to the said John Jermin and at his instance and request before that time sold and delivered; and so therein being indebted the said John Jermin afterwards, to wit, the same first day of October in the year of the Lord 1692 aforesaid, at Mansfield aforesaid in the county aforesaid, in consideration thereof assumed upon himself, and to the same duke then and there faithfully promised, that he the said John Jermin the said 500l. to the same duke, when he should be thereunto required, well and faithfully would pay and content: And whereas also the said John Jermin afterwards, to wit, the same first day of October in the year of the Lord 1692 aforesaid at Mansfield aforesaid in the county aforesaid, in consideration that the said duke at the like special instance and request of the said John Jermin had then and there sold and delivered to the said John Jermin another parcel of wood, to wit, another 1500 cords of wood, assumed upon himself, and to the same duke then and there faithfully promised, that he the said John Jermin so much money, as the wood last mentioned at the time

time of the sale and delivery thereof was reasonably worth, to the same duke, when he should be thereto likewise required, would well and faithfully pay and content: And the same duke in fact says, that the said wood last mentioned, at the time of the sale and delivery of the same, was reasonably worth other 500*l*. whereof the said *John Fermyn* afterwards, to wit, the said first day of *October* in the year of the Lord 1692 abovesaid, at *Mansfield* aforesaid in the county aforesaid, had notice: And whereas also the said *John Fermyn* afterwards, to wit, the same first day of *October* in the year of the Lord 1692 abovesaid, at *Mansfield* aforesaid in the county aforesaid, was indebted to the same duke in other 412*l*. 10*s*. for other wood, to wit, for other 1500 cords of wood by the said duke to the said *John Fermyn*, and at his instance and request, at the rate and price of 5*s*. 6*d*. for every cord of the said wood last mentioned before that time sold and delivered; and being so therein indebted the said *John Fermyn* afterwards, to wit, the same first day of *October* in the year of the Lord 1692 abovesaid, at *Mansfield* aforesaid in the county aforesaid, in consideration thereof assumed upon himself, and to the same duke then and there faithfully promised, that he the said *John Fermyn* the said 412*l*. 10*s*. last mentioned to the same duke, when he should be thereunto afterwards likewise required, would well and faithfully pay and content: And whereas also the said *John Fermyn* afterwards, to wit, the same first day of *October* in the year of the Lord 1692 abovesaid at *Mansfield* aforesaid in the county aforesaid, accounted with the said duke for several other sums of money by the said *John Fermyn* to the said duke before that time due, and to the same duke then being in arrear and unpaid; and upon that account the said *John Fermyn* was found in arrear to the said duke in other 412*l*. 10*s*. and so being therein found in arrear, the said *John Fermyn* afterwards, to wit, the said first day of *October* in the year of the Lord 1692 above said at *Mansfield* aforesaid in the county aforesaid, in consideration thereof assumed upon himself, and to the same duke then and there faithfully promised, that he the said *John Fermyn* the said 412*l*. 10*s*. last mentioned to the same duke, when he should be thereto afterwards likewise required, well and faithfully would pay and content: Nevertheless the said *John Fermyn* his several promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same duke in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same duke according to his several promises and assumptions aforesaid, hath not yet paid, nor him for the same hath hitherto in any wise contented, altho' to do it the said *John Fermyn* was afterwards, to wit, the same first day of *October* in the year of the Lord 1692 abovesaid at *Mansfield* aforesaid in the county aforesaid, by the said duke required, but to pay him them, or him for the same hitherto in any wise to content, hath altogether refused, and yet doth refuse, to the damage of the said duke 550*l*. And therefore he produces the suit, &c.

Avermang.

Count for
412*l*. 10*s*.
for other
wood.

[23]

In simul com.
putasset.
Pract. Reg.
§ 10.

Beach.

Assumpsit by a clerk of the crown office against another clerk of that office for money deposited in his hands on a wager.

Count for two guineas received by defendant to plaintiff's use.

Midd., to wit. **R**obert S. gent. one of the clerks of *Samuel Asty*, knt. the coroner and attorney of the now lord the king; complains of *Henry B.* gent. another clerk of the said *Samuel Asty*, knt. the coroner and attorney of the said now lord the king present here in court in his proper person for this, to wit, that whereas the said *Henry* the first day of *January* in the year of the Lord 1699, at *Westminster* in the county aforesaid was indebted to the said *Robert* in two guineas of the value of 43 s. of lawful money of *England*, for so much money of the money of him the said *Robert* by the said *Henry* to the use of him the said *Robert* before there had and received; and so being therein indebted he the said *Henry* in consideration thereof afterwards, to wit, the same day and year, at *Westminster* aforesaid in the county aforesaid, assumed upon himself, and to the same *Robert* then and there faithfully promised, that he the said *Henry* the said two guineas to the same *Robert*, when he should thereto afterwards be required, well and faithfully would pay and content: And whereas also the said *Henry* afterwards, to wit, the same day, year and place, was indebted to the same *Robert* in 5 l. of lawful money of *England*, for so much money of him the said *Robert* by him the said *Henry* to the use of him the said *Robert* before there had and received; and being so therein indebted the said *Henry* then and there in consideration thereof assumed upon himself, and to the said *Robert* then and there faithfully promised, that he the said *Henry* the said 5 l. to the same *Robert*, when he shou'd be thereto afterwards required, would well and faithfully pay and content: Nevertheless the said *Henry* his promises and assumptions aforesaid not regarding, but contriving and fraudulently intending the same *Robert* in this behalf craftily and subtilly to deceive and defraud, the said two guineas, and the said 5 l. or any part thereof, to the said *Robert* hath not yet paid, altho' to do it the said *Henry* afterwards, to wit, the 10th day of *January* in the year of the Lord aforesaid, and often afterwards, at *Westminster* in the county aforesaid by the same *Robert* was required, but the same *Henry* to pay him them, or him for the same hitherto in any wise to content, hath altogether refused, and yet doth refuse, to the damage of the said *Robert* 20 l. And therefore he produces the suit, &c.

Gibson and Ousnam.

Case for arresting the plaintiff in the mayor of *Maidstone's* court without cause of action. Salk. 14, 15, 727.

Kent, to wit. **R**ichard Gibson complains of *John Ousnam*, being in the custody of the marshal of the *Marshalsea* of the lady the queen, before the queen herself, for this, to wit, that whereas the said *Richard* being a person of a good name, estate, credit and reputation, among his neighbours and others whomsoever with whom he had dealing, the said *John* 8th day of *March* in the 9th year of the reign of the lord *William* the third, late king of *England*; &c. at the parish of *Maidstone* in the

Action on the case.

† 23

[24]

the county of *Kent* aforesaid, contriving and intending him the said *Richard* by colour of law to oppress and in prison to keep and detain, at the parish of *Maidstone* aforesaid falsely, fraudulently, unduly and maliciously, in the name of the said *John*, a certain plaint against him the said *Richard* in a plea of trespass on the case, to the damage of the said *Richard* 12 *l.* at the suit of the said *John* in the court of record held before *George Pierce*, gent. then mayor of the town and parish aforesaid, according to the custom in the same town used time out of mind within the jurisdiction of the court aforesaid, without any just cause levied and affirmed; and the same *Richard*, by virtue of the said plaint, within the jurisdiction of the same court, to be arrested and imprisoned, and in prison aforesaid to be detained for the space of three days then next following, caused and procured, when in truth the said *John* at the time of levying and affirming the plaint aforesaid, or at the time of the arrest and imprisonment aforesaid, had no just cause of action against the said *Richard* within the jurisdiction of the court aforesaid; whereby the said *Richard* says, that he is prejudiced, and has damage to the value of 100 *l.* And therefore he produces the suit, &c.

Averment.

Harris and Wright, Esq.

Midd., to wit. **E**zekiel *Wright* late of *London* esq; was attached to answer to *John Harris* late of *London* esq; in a plea of trespass on the case: And whereupon the same *John* by *J. B.* his attorney complains, why whereas he the same *Ezekiel* the first day of *September* in the 13th year of the reign of the lord *William* the third now king of *England*, &c. at *Westminster* in the county aforesaid, was indebted to the said *John* in 500 *l.* of lawful money of *England*, for so much money by the said *Ezekiel* to the use of the said *John* before then had and received; and being so therein indebted he the same *Ezekiel* in consideration thereof afterwards, to wit, the same day and year abovesaid at *Westminster* aforesaid in the county aforesaid, assumed upon himself, and to the same *John* then and there faithfully promised, that he the same *Ezekiel* the said 500 *l.* to the same *John*, when he should be thereto afterwards required, well and faithfully would pay and content: Nevertheless the said *Ezekiel* his promise and assumption aforesaid not regarding, but contriving and fraudulently intending the same *John Harris* in this behalf craftily and subtilly to deceive and defraud, the said 500 *l.* or any penny thereof to the same *John* hath not yet paid, nor him for the same hath hitherto any ways contented, altho' to do it he the same *Ezekiel* afterwards, to wit, 2d day of *September* in the year abovesaid, at *Westminster* aforesaid by the same *John* was required; whereby the same *John* says, that he is prejudiced, and has damage to the value of 500 *l.* And therefore he produces the suit, &c.

Assumpsit to try the title to an office.
Count for money received to plaintiff's use.
Parl. Rep.
158 to 164,
111 to 127.

Frith and Henley.

Quantum meruit for medicines administered by him to a third person.

Midd^x, to wit, **R**obert Frith apothecary complains of *William Henly* in the custody of the marshal, &c. for this, to wit, that whereas the first day of *May* in the year of the Lord 1699, at *Westminster* in the county aforesaid, the same *Robert* at the special instance and request of the said *William* had administered, delivered and applied to one *Robert Emerton*, the apprentice of the said *William*, divers medicaments, medicines and medicinal potions, he the said *William* in consideration thereof afterwards, to wit, the same day and year aforesaid at *Westminster* aforesaid in the county aforesaid, assumed upon himself, and to the same *Robert Frith* then and there faithfully promised, that he the said *William* so much money for the said medicaments, medicines and medicinal potions, so as aforesaid administered, delivered and applied to the said *Robert Emerton* the aforesaid apprentice of the same *William*, as he the said *Robert Frith* therefore reasonably deserved to have, to the same *Robert*, when he should be thereto afterwards required, would well and faithfully pay and content; And the same *Robert Frith* in fact says, that he the said *Robert* reasonably deserved to have for the said medicaments, medicines and medicinal potions, by him the said *Robert Frith* to the said *Robert Emerton* the apprentice so as aforesaid administered, delivered and applied 3*l.* 10*s.* of lawful money of *England*, to wit, at *Westminster* aforesaid in the county aforesaid, whereof he the same *William* afterwards, to wit, the same day and year aforesaid, there had notice: And whereas also the said *William* the same day and year aforesaid at *Westminster* aforesaid in the county aforesaid was indebted to the said *Robert Frith* in other 3*l.* 10*s.* of lawful money of *England*, for money by the said *Robert Frith* to the use of the said *William* and at his special instance before then expended and laid out; and being so therein indebted the same *William* in consideration thereof afterwards, to wit, the day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, assumed upon himself, and to the said *Robert Frith* then and there faithfully promised, that he the same *William* the 3*l.* 10*s.* last mentioned to the same *Robert Frith*, when he should be thereto afterwards required, would well and faithfully pay and content: Nevertheless the said *William* his several promises and assumptions aforesaid not regarding, but contriving and fraudulently intending the same *Robert Frith* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *Robert Frith* (altho' to do it he was by the said *Robert Frith* afterwards, to wit, the first day of *June* in the year of the Lord 1699 aforesaid, and often afterwards, at *Westminster* aforesaid in the county aforesaid required) hath not yet paid, or any ways for the same contented, but the said *William* hitherto to pay him them, or for the same any ways to content, hath altogether refused, and yet doth refuse, to the damage of the said *Robert* 20*l.* And therefore he produces the suit, &c.

Brown

Brown and Cary.

Midd^x, to wit. **J**oseph Brown doctor of physick complains of *Martha Cary*, otherwise *Kingston*, in the custody of the marshal, &c. for this, to wit, that whereas the said *Martha* on the sixth day of *June* in the year of the Lord 1706, at *Westminster* in the county of *Middlesex* aforesaid, was indebted to the same *Joseph* in 12*l.* of good and lawful money of *England*, for his work and labour by the said *Joseph* at the special instance and request of the said *Martha* before that time in and about the visiting, curing and healing the said *Martha* of certain diseases and pains wherewith the same *Martha* was sick and languished, applied and bestowed; and being so therein indebted the same *Martha* in consideration thereof afterwards, to wit, the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, assumed upon herself, and to the same *Joseph* then and there faithfully promised, that she the same *Martha* the said 12*l.* to the same *Joseph*, when she should thereto afterwards be required, well and faithfully would pay and content: And whereas also the said *Martha* afterwards, to wit, the same day and year aforesaid at *Westminster* aforesaid in the county aforesaid, in consideration that he the said *Joseph*, at the like special instance and request of her the said *Martha* before the time last mentioned, other his work and labour had bestowed and applied in and about the visiting, curing and healing the said *Martha* of certain other diseases and pains wherewith the said *Martha* had been sick and languished, assumed upon herself, and to the same *Joseph* then and there faithfully promised, that she the same *Martha* so much money, as he the said *Joseph* therefore reasonably deserved to have, to the same *Joseph*, when she should be thereto afterwards required, well and faithfully would content and pay: Nevertheless the said *Martha* her several promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the said *Joseph* in this behalf craftily and subtilly to deceive and defraud the said several sums of money, or any penny thereof, to the same *Joseph* hath not yet paid, or him for the same hath hitherto any ways contented, (altho' to do it the said *Martha* afterwards, to wit, 7th day of *January* in the year of the Lord 1706 aforesaid and often afterwards, at *Westminster* aforesaid in the county aforesaid by the said *Joseph* was required,) but the same to the said *Joseph* hitherto to pay, or for the same any way to content, hath altogether refused, and yet doth refuse; whereby the same *Joseph* says that he is prejudiced, and has damage to the value of 30*l.* And therefore he produces the suit, &c.

Assumpsit by a doctor in physick.

Quantum meruit.

Wright and Martine.

London, to wit. **B**ernard Wright complains of *George Martine* in the custody of the marshal, &c. for this, to wit, that whereas the said *George* on the fourth day of *June* in the year of the

Assumpsit by a physician for curing defendant's wife of a lunacy.

Averment.

[26]

Indebted for
work and la-
bour and money
expended.

the Lord 1696 at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, in consideration that the same *Bernard* being then and there skilful in the art of physick would then and there, at the special instance and request of the said *George*, use and employ his best endeavours to heal and cure *Jane Martine*, wife of the said *George Martine*, of a certain infirmity of mind or lunacy with which the said *Jane* was then and there greatly disturbed in her mind, and grievously languished, and the said *Jane* restore to sanity of mind, assumed upon himself, and to the same *Bernard* then and there faithfully promised, that he the same *George* the sum of 10*l.* of lawful money of *England* to the same *Bernard* for his pains and industry in and about the healing and curing of the said *Jane* of the said infirmity, when that cure should be performed, and the said *Jane* should be restored to sanity of mind, well and faithfully would pay and content: And the same *Bernard* in fact says, that he giving credit to the promise and assumption of the said *George* in form aforesaid made, afterwards, to wit, the same day and year aforesaid, and at all necessary times then after, until and upon the 21st day of *September* in the year of the Lord aforesaid, at *London* aforesaid in the parish and ward aforesaid, his pains, labour and endeavour did use and employ to heal and cure the said *Jane* of her infirmity of mind and lunacy aforesaid, and afterwards, to wit, the said 21st day of *September* in the year of the lord aforesaid, at *London* aforesaid in the parish and ward aforesaid, the said cure there did perform, and the said *Jane* to sanity of mind did restore, and thereof the said *George* then and there had notice: And whereas also the said *George* afterwards, to wit, the said 21st day of *September* in the year of the Lord aforesaid, at *London* aforesaid in the parish and ward aforesaid, was indebted to the same *Bernard* in other 10*l.* of like lawful money of *England*, as well for other work and labour of the said *Bernard*, by him the said *Bernard* for the said *George*, and at the special instance and request of the said *George*, before that time done and performed, as for divers sums of money of the said *Bernard*, by him the said *Bernard* at the like special instance and request of the said *George* for the same *George* before that time laid out and expended: and being so therein indebted the said *George* in consideration thereof afterwards, to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *Bernard* then and there faithfully promised, that he the same *George* the said 10*l.* last mentioned to the same *Bernard*, when he should be thereto afterwards required, well and faithfully would pay and content: Nevertheless the said *George* his several promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same *Bernard* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money or any penny thereof, to the same *Bernard* hath not paid, nor him for the same, or any part thereof, hath any way contented, (altho'

to do it the same *George* afterwards, to wit, the same day and year last abovesaid, at *London* abovesaid in the parish and ward abovesaid, was by the said *Bernard* required,) but to pay him them, or for the same any way to content, hath hitherto altogether refused, and yet doth refuse; whereby the same *Bernard* says that he is prejudiced, and hath damage to the value of 40*l*. And therefore he produces the suit, &c.

Deacon and another and Fell.

London, to wit. **W**illiam Deacon and Richard Staples, executors of the last will and testament of *William Goffe* deceased, complains of *John Fell* in the custody of the marshal, &c. for this, to wit, that whereas the said *William Goffe* in his life time, to wit, the 10th day of *December* in the year of the Lord 1701, loaded in and upon a certain ship called the *Thomas* and *Elizabeth*, whereof the said *John* was then master, then riding in the river *Sherboro* in *Guinea* in *Africa* in parts beyond the seas, the goods and merchandizes following, to wit, two tons and 300 pounds weight of red wood, 104 large elephants teeth weighing 2500 pounds three quarters of a hundred pounds and seventeen pounds, 59 small elephants teeth, weighing one hundred pounds three quarters of a hundred pounds and eleven pounds, to the value of 500*l*. of lawful money of *England*, in good order and well conditioned, from thence to be transported, and by him the said *John Fell* to the said *William Goffe* at the port of *London* abovesaid to be delivered, the danger of the seas and the restraint of princes excepted, at the rate of 6*l*. by the ton, by the said *William Goffe* to the said *John* therefore to be paid: The said *John* in consideration of the premisses afterwards, to wit, the same day and year abovesaid, at *London* abovesaid, to wit, at the parish of *St. Mary-le-bow* in the ward of *Cheape*, assumed upon himself, and to the said *William* in his life-time then and there faithfully promised, that he the same *John* the goods and merchandizes abovesaid from thence would transport, and to the said *William Goffe* at the port of *London* well and faithfully would deliver in the like good order and well conditioned, the danger of the seas and restraint of princes excepted: And altho' the ship abovesaid, with the goods and merchandizes abovesaid thereon loaded, afterwards, to wit, the 2d day of *March* in the year of the Lord abovesaid, at the port of *London* abovesaid, to wit, at the parish and ward abovesaid, safely arrived, and altho' the danger of the seas, or the restraint of princes did not hinder, and altho' the said *William Goffe* in his life-time, and the said *William Deacon* and *Richard* always after his death and hitherto were ready to pay to the said *John* according to the rate of 6*l*. by the ton, for the transportation of the goods and merchandizes abovesaid: Nevertheless the said *John* contriving and intending the said *William Goffe* in his life-time, and the said *William Deacon* and *Richard*, after the death of the said *William Goffe*, of the goods and merchandizes abovesaid craftily

Case by executors against the master of a ship for goods transported by him from *Guinea* to *London* for hire.

[27]

tily and subtilly to deceive and defraud, the goods and merchandizes aforesaid to the said *William Goffe* in his life-time, or to the same *William Deacon* and *Richard*, or either of them, after the death of the said *William Goffe*, hath not delivered, altho' the said *John* to deliver them to the said *William Goffe* afterwards, to wit, the said second day of *March* in the year of the Lord aforesaid, at *London* aforesaid in the parish and ward aforesaid, was required; and altho' the said *John* after the death of the said *William Goffe*, to wit, the second day of *April* in the year of the Lord 1702, at *London* aforesaid in the parish and ward aforesaid, to deliver them to the said *William Deacon* and *Richard* was required, but the same to deliver unto them hath hitherto altogether refused, and yet doth refuse; whereby the same *William Deacon* and *Richard* say they are prejudiced, and have damage to the value of 500*l*. And therefore they produce the suit, &c. And the same *William Deacon* and *Richard* produce here in court the letters testamentary of the said *William Goffe*, whereby it sufficiently appears to the court here, that the said *William Deacon* and *Richard* are executors of the will of the said *William Goffe* aforesaid, and thereof have the administration, &c.

Assumpsit by an attorney against a peer as executor, for his fees, &c. in law and equity, as attorney and solicitor for the testatrix.

Special retainer.

Quant' mer'.

Midd, to wit. **C** *Charles* lord *C.* executor of the will of *Dorothy* countess dowager of *Arran* deceased, was attached to answer *A. H.* gent. one of the attornies of the court of the lord the king of the bench in a plea of trespass on the case, &c. And whereon the said *Anthony* in his proper person complains, that whereas the said dowager in her life-time, to wit, the 13th day of *December* in the year of the Lord 1716 at *Westminster*, in consideration that the same *Anthony* (being then and long before and afterwards an attorney of the court of the said lord the king of the bench here, to wit, at *Westminster* aforesaid) at the special instance and request of the said countess, several suits, causes and actions in law and equity, and divers difficult and important affairs for the said countess, and according to her order and appointment, well, faithfully and industriously, had defended and solicited, and had managed, carried on, done and performed, and by that means great sums of money had laid out, deposited and paid, assumed upon herself, and to the said *Anthony* then and there faithfully promised, to pay to the same *Anthony* all such sums of money as the said *Anthony* so as aforesaid had laid out, deposited and paid, and what he for his fees, industry, care and labour in and about the premises, reasonably deserved to have: And the same *Anthony* in fact says, that he, before the said time of the promise and assumption aforesaid made, had by that means as is aforesaid laid out, deposited and paid, and for his fees, industry, care and labour in and about the premises, reasonably deserved to have of the said countess divers sums of money, amounting in the whole to 46*l*. 19*s*. 9*d*. whereof the said countess afterwards, to wit, the same day and year, at *Westminster* aforesaid, had notice: And whereas

whereas also the said countess afterwards, to wit, the 14th day of *December* in the year above said, at *Westminster* afore said, was indebted to the said *Anthony*, (being then and long before and afterwards an attorney of the court of the said lord the king of the bench afore said here), in other 46 *l.* 19 *s.* 9 *d.* for money by the said *Anthony* for the said countess and at her request in and about several actions, causes and suits in law and equity, and the business of the said countess before that time deposited, laid out and paid, and for his fees, industry, care and labour in and about the defence, solicitation, carrying on and management of the actions, causes, suits and business afore said, by him, on the behalf of the said countess and at her request, before that time done and performed: And being so therein indebted the said countess the same day and year above said at *Westminster* afore said, in consideration thereof, assumed upon herself, and to the same *Anthony* then and there faithfully promised, that she the said countess the same sum of money last mentioned to the same *Anthony* would well and faithfully pay and content: Nevertheless the said countess in her life-time, and the said lord after the death of the said countess, the several promises and assumptions of the said countess not regarding, but contriving and intending the same *Anthony* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, although often required, to the same *Anthony* have not paid or any way contented, but to pay him them have refused, and the said lord to pay them to the same *Anthony* doth yet refuse, to the damage, &c.

Indebitas.

Breach of promise.
This judgment was reversed, the writ of inquiry being executed on a Sunday.
Salk. 626.

Midd. to wit. **T** *Thomas B.* late of *London*, gent. and *Hannah* his wife, were attached to answer to *George F.* in a plea of trespass on the case, &c. And whereon the said *George* by *Milo Baispools* his attorney complains, why whereas the said *Hannah* while she was sole, to wit, the thirtieth day of *September* in the fourth year of the reign of the lord *George* now king of *Great Britain*, at *Westminster* in the county afore said, was indebted to the said *George* in 130 *l.* of lawful money of *Great Britain*, as well for the work, labour and care of the said *George*, about the funeral of one *Mary Whitlocke* widow deceased, by the said *George* before that time, at the special instance and request of the said *Hannah* while she was sole, done and performed, as for divers materials and things necessary by the said *George*, at the like special instance and request of the said *Hannah* while she was sole, and at the costs and charges of the said *George* on that account found and provided, and at and about that funeral used and employed: And being so therein indebted the same *Hannah* while she was sole, in consideration thereof, afterwards, to wit, the same day and year, at *Westminster* afore said in the county afore said, assumed upon herself, and so the same *George* then and there faithfully promised, that she the said *Hannah* the said 130 *l.* to the said *George*, when she should be thereto

Indebitas against a third person *dum sola* for the charges of a funeral.
Salk. 731.

Action on the case.

thereto afterwards required, well and faithfully would pay and content: And whereas also the said *Hannah* while she was sole, to wit, the day and year abovesaid, at *Westminster* afore said in the county afore said, in consideration that the said *George* had before that time, at the like instance and request of the same *Hannah* while she was sole, his work, care and labour in and about the funeral of a certain other *Mary Whitlocke* widow deceased, sustained and supplied, and at the like instance and request of the said *Hannah* divers materials and things necessary on that account at the costs and charges of the said *George* had found and provided, and the same materials and things necessary last mentioned in and about the funeral last mentioned had employed and used, assumed upon herself, and to the said *George* then and there faithfully promised, that she the said *Hannah*, not only so much money as the same *George* for his work, care and labour last mentioned, reasonably deserved to have, but also so much money, as the materials and things necessary last mentioned at the time of the finding and providing the same as afore said were reasonably worth, to the said *George*, when she should thereto afterwards be required, would well and faithfully pay and content: And the same *George* in fact says, that at the time of the promise and assumption last mentioned he the said *George* for his work, care and labour last mentioned, reasonably deserved to have other 130*l.* of like money, and that the materials and things necessary last mentioned, at the time of the finding and providing of the same as afore said, were reasonably worth other 130*l.* of like money, to wit, at *Westminster* afore said in the county afore said, whereof the said *Hannah* while she was sole then and there had notice: Nevertheless the said, &c.

Wilkins and Frogley.

For the hire of
a horse, bridle
and saddle.

Midd^r, to wit. **A** *Rthur Frogley* late of *Westminster* in the county afore said, gent. was attached to answer to *John W.* in a plea of trespass on the case, &c. And whereon the same *John* by *A. B.* his attorney complains, that whereas the said *Arthur*, on the 31st day of *May* in fourth year of the reign of the lord the now king, at *Westminster* in the county afore said, was indebted to the same *John* in 10*l.* of lawful money of *Great Britain* for the hire of a certain gelding of the said *John*, by the same *John* to the said *Arthur* at his special instance and request before that time let to hire, and by the same *Arthur* according to that hiring had and rode: And so therein being indebted the said *Arthur* in consideration thereof afterwards, to wit, the same 31st day of *May* in the fourth year abovesaid, at *Westminster* in the county afore said, assumed upon himself, and to the same *John* then and there faithfully promised, that he the said *Arthur* the said 10*l.* to the same *John*, when he should be thereto afterwards required, well and truly would content and pay: And whereas also the said *Arthur* afterwards, to wit, the same

same 31st day of *May* in the fourth year of the reign of the said lord the now king aforesaid, at *Westminster* aforesaid in the county aforesaid, in consideration that the said *John*, at the special instance and request of the said *Arthur*, had before that time let to hire to the same *Arthur* a certain other gelding of the said *John* to ride about the business of the said *Arthur*, and the same *Arthur* the same gelding for a long time on that letting had had, and about his business had rode, assumed upon himself, and to the same *John* then and there faithfully promised, that he the said *Arthur* so much money for the hire of the gelding last mentioned, as the said *John* therefore reasonably deserved to have, to the same *John*, when he should be thereto afterwards required, well and truly would pay and content: And the same *John* in fact says, that he for the hire of the gelding last mentioned reasonably deserved to have of the same *Arthur* another 10*l.* of like lawful money of *Great Britain*, to wit, at *Westminster* aforesaid in the county aforesaid, whereof the said *Arthur* then and there had notice: Nevertheless the said *Arthur* his promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same *John* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *John* hath not yet paid, or hath any way for the same contented, (although to do it the said *Arthur* afterwards, to wit, the same 31st day of *May* in the fourth year above said, at *Westminster* aforesaid in the county aforesaid, by the said *John* was required), but them hitherto to pay him hath altogether refused, and yet doth refuse: And whereas also the said *John*, 21st day of *February* in the fourth year of the reign of the lord the now king, at *Westminster* aforesaid in the county aforesaid, at the special instance and request of the said *Arthur*, had let and lent to the said *Arthur* a certain other gelding, together with a saddle and bridle of the said *John*, about the business of the said *Arthur*, for the space of six weeks from thence next following, to ride and use, the same *Arthur* in consideration thereof afterwards, to wit, the same 21st day of *February* in the fourth year above said, at *Westminster* aforesaid in the county aforesaid, assumed upon himself, and to the same *John* then and there faithfully promised, that he the said *Arthur*, as well the said gelding last mentioned, as the said saddle and bridle, to the same *John* at the end of the said six weeks well and faithfully would re-deliver: Nevertheless the said *Arthur* his said promise and assumption not regarding, the gelding aforesaid, &c. altho' often required, to the same *John* hath not yet re-delivered, or any way contented, but the same to him hitherto to re-deliver hath altogether refused, and to re-deliver the same to the said *John* doth yet refuse, to the damage of the said *John* 30*l.* And therefore he produces the suit, &c.

[29]

Bank of England against Parry.

By the governor of the Bank of England assignees of a promissory note to pay 500*l.* to Sir J. H. in the bank of England such a day for value received.

London, to wit. **T** *Thomas Parry late of London, wine cooper, was* attached to answer to the governor and company of the bank of *England* in a plea of trespass on the case, &c. And whereupon the said governor and company of the bank of *England* by G. N. their attorney complain, why whereas the said *Thomas* after the first day of *May* in the year of the Lord 1705, to wit, the 25th day of *October* in the year of the Lord 1717 at *London* aforesaid in the parish of *St. Mary-le-bow* in the ward of *Cheape*, made his certain promissory note in writing with his own proper hand subscribed, bearing date the same day and year last aforesaid; by which said note the same *Thomas Parry* promised to pay to *J. H. bart.* or order into the bank of *England* 524*l.* 14*s.* 1*d.* the 25th day of *January* then next following for value received the same 25th day of *October* in the year of the Lord 1717 aforesaid: And whereas the said *J. H. bart.* afterwards, to wit, 31st day of *December* in the year of the Lord 1717 aforesaid, at *London* aforesaid in the parish and ward aforesaid, by indorsement with his own proper hand on the same note subscribed, ordered and appointed the said 524*l.* 14*s.* 1*d.* in the said promissory note mentioned, according to the tenor of the same promissory note, to be paid to the said governor and company of the bank of *England*, or their order; by reason of which said premises, as also by force of the statute in such case lately made and provided, the same *Thomas* became chargeable, and ought to be charged to pay to the said governor and company of the bank of *England* the said 524*l.* 14*s.* 1*d.* in the said promissory note mentioned, according to the tenor and effect of the said promissory note and indorsement aforesaid; and so being chargeable he the said *Thomas* in consideration thereof afterwards, to wit, the same day and year aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same governor and company of the bank of *England* then and there faithfully promised, to pay to the said governor and company of the bank of *England* the said 524*l.* 14*s.* 1*d.* in the said promissory note mentioned, according to the tenor and effect of the same promissory note: And whereas also the said *Thomas Parry* afterwards, to wit, the 25th day of *January* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, was indebted to the governor and company of the bank of *England* in other 524*l.* 14*s.* 1*d.* for so much money to the said *Thomas*, and at his special instance and request before that time by the same governor and company of the bank of *England* lent; and the said *Thomas* being so therein indebted in consideration thereof afterwards, to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same governor and company of the bank of *England* then and there faithfully promised, that he the same *Thomas* the said 524*l.* 14*s.* 1*d.* last mentioned to the said governor and company of the bank of *England*, when he should be thereto afterwards required, well and faithfully would content and pay: Nevertheless the said, &c.

Indebted for money lent by the Bank to the defendant.

King and Peach.

North'ton, to wit. *John Peach* late of *M.* in the county aforesaid, gent. was attached to answer to *Joseph King* in a plea of trespass on the case, &c. And whereon the same *Joseph* by *A. B.* his attorney complains, that whereas the said *John* the 23d day of *April* in the year of the Lord 1697, at *M.* aforesaid in the county aforesaid, a certain dog accustomed to bite sheep knowingly kept; which said dog afterwards, to wit, the day, year and place aforesaid (then being the dog of the same *John*) forty sheep of the said *Joseph* then and there found so grievously bit, that thirty sheep of the price of 40*l.* of the said forty sheep of him the said *Joseph* died, and the residue of the sheep were much the worse, to the damage of the said *Joseph* 40*l.* And therefore he produces the suit, &c.

Case for keeping a dog accustomed to bite sheep. Pract. Reg. 28.

Terry and another and Page and others.

[30]

South'ton, to wit. *John Page* late of *Lasham* in the county aforesaid, yeoman, *Nathaniel Edwards* late of (and others) were attached to answer *John Terry*, gent. and *John Simpson* in a plea of trespass on the case, &c. And whereon the same *John Terry* and *John Simpson* by *J. C.* their attorney complain why whereas the dean and chapter of the cathedral church of the holy Trinity Winchester in the county aforesaid were lately seised of a certain close of pasture called *Sawpit Close*, with the appurtenances, in the parish of *Sutton* in the county aforesaid, on the north side of the king's highway there, and lying next and contiguous to the same way, in their demesne as of fee in the right of their said church: And whereas one *Stephen Terry*, gent. was also lately seised of one other close of meadow or pasture, with the appurtenances, called *Coop Close* there on the south part of the said king's highway, and lying next and contiguous to the same, in his demesne as of fee: And the same dean and chapter, and the said *Stephen Terry*, and all they whose estate they respectively had in their closes aforesaid, with the appurtenances, from time immemorial had and held, and to have and hold were used and accustomed, in and upon their said closes, yearly and every year every sixth day of *November*, if it was not the Lord's day, and if it was, then on the morrow of the same day, a certain fair for all manner or sheep there to be bought and sold, together with toll, stallage, sheep-pens, piccage, and all other profits, commodities and emoluments whatsoever to that fair incident, belonging or appertaining, to wit, such toll, stallage, piccage and profits to them respectively and separately for such sheep, as in and upon their said several closes respectively were bought, sold or exposed to sale: And whereas the same *John Terry* now is, and for divers years now last past was, possessed of the said close of the said dean and chapter, and of their part of the fair aforesaid, as their farmer and under tenant thereof for a term of years which is not yet passed: And whereas the said *John Simpson*

Case for erecting a new sheep fair in prejudice of plaintiff's old fair by prescription.

Prescription. Pract. Reg. 29.

son now is, and for divers years now last elapsed was, also lawfully possessed of the said other close of the said *Stephen Terry*, and of his part of the said fair, with the appurtenances likewise, as his farmer and undertenant thereof: And therefore they the said *John Terry* and *John Simpson* the whole profit of that fair between them respectively, so as aforesaid, for all the said time should and ought to have and receive: Nevertheless the said *John Page*, *Nathaniel*, &c. the premisses well and sufficiently knowing, but contriving and fraudulently intending the said *John Terry* and *John Simpson* unjustly to oppress, and of and in the toll and profits of the said fair greatly to deprive and hinder, lately, and a very short time before their said fair in and upon their said closes ought to be held, a certain new fair for sheep, without any lawful warrant or authority whatever, at the parish of *Herriard* in the county aforesaid, near the said closes where the said fair of them the said *John Terry* and *John Simpson* had been and was to be held as aforesaid, levied and erected to be held yearly, and that new fair at the same parish unlawfully and injuriously held and kept; in which said new fair, by the same *John Page*, *Nathaniel*, &c. so erected, levied and kept, very many sheep were bought, sold, and exposed to sale, and the said *John Page*, and *Nathaniel*, &c. great sums of money for toll thereof there took and had, to the prejudice, detriment and great hurt of the old fair of them the said *John Terry* and *John Simpson*; and the said *J. T.* and *J. S.* thereby the toll, stallage, sheep-pens, profits, commodities and emoluments, which of and in their said fair they might have received and had, did lose, to the damage of the said *J. T.* and *J. S.* 10*l.* And therefore they produce the suit, &c.

Johnson and Godson.

London, to wit. *James Johnson* complains of *Samuel Godson* in custody of the prison of *Ludgate* in the city of *London*, for this, to wit, that whereas the said *Samuel* the first day of *October* in the ninth year of the reign of the lord *William* the third, now king of *England*, &c. at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, was indebted to the said *James* in 50*l.* of lawful money of *England*, for beer and ale by the said *James* to the same *Samuel* and at his instance before that time sold and delivered; and so being therein indebted the same *Samuel* in consideration thereof afterwards, to wit, the same day and year above said, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *James* then and there faithfully promised, to pay him that sum: And whereas also the said *Samuel* afterwards to wit, the sixth day of *October* in the ninth year above said, at *London* aforesaid in the parish and ward aforesaid, in consideration that the said *James*, at the special instance and request of the said *Samuel*, before that time had sold and delivered to the said *Samuel* other beer and ale, assumed upon himself and to the said *James* then and there promised, to pay him so much money

*Assumpsit for
beer and ale.*

[31]
Quant Mer.

money as he therefore reasonably deserved to have: And the said James in fact says, that he therefore reasonably deserved to have other 50*l.* of like money, to wit, at London aforesaid in the parish and ward aforesaid; whereof the said Samuel the day and year last aforesaid there had notice: Nevertheless the said, &c.

James and Englefield, Bart.

Midd', to wit. *W*illiam James, esq; complains of Charles Englefield, bart. in the custody of the marshal, &c. for this, to wit, that whereas the said Charles, on the 1st day of June in the fifth year of the reign of the lady the now queen, at the parish of St. James's Westminster in the county of Middlesex aforesaid, was indebted to the same William in 100*l.* of lawful money of this kingdom for meat, drink, washing and lodging, by the said William James before that time for one Susanna Englefield the wife of the said Charles, at the instance of the said wife while she was the wife of the said Charles, found and provided, and for money, by the said William James to the same Susanna, the wife of the said Charles, lent in and about her necessary business to be expended and by her so expended: And being so therein indebted the same Charles in consideration thereof afterwards, to wit, the same day and year, at the parish aforesaid in the county aforesaid, assumed upon himself, and to the same William James then and there faithfully promised, to pay him the same sum of money: And whereas also the said Charles afterwards, to wit, the same day and year, at the parish aforesaid in the county aforesaid, in consideration that the said William James, at the instance of the said wife and in the absence of the said Charles, before that time had found and provided for the same wife of the said Charles other meat, drink, washing and lodging, and divers other necessities for her necessary apparel, assumed upon himself, and to the same William James then and there faithfully promised, to pay him so much money as he therefore reasonably deserved to have: And the same William James in fact says, that he therefore reasonably deserved to have of the said Charles another sum of 100*l.* of like lawful money, to wit, at the parish aforesaid in the county aforesaid, whereof the said Charles afterwards, to wit, the same day and year there had notice: And whereas also the said William James, after the death of the said Susanna the wife of the said Charles, to wit, the first day of August in the year aforesaid, at the parish aforesaid in the county aforesaid, at the special instance and request of the said Charles, had paid, expended and laid out, divers other sums of money in and about the funeral of the said wife of the said Charles, he the said Charles in consideration thereof afterwards, to wit, the same day and year last aforesaid, at the parish aforesaid in the county aforesaid, assumed upon himself, and to the same William James then and there faithfully promised, to pay him so much money as he on

Assumpsit against the husband for diet and lodging of his wife, and monies lent her and laid out to her use, and for clothes and money expended in her funeral. Salk. 131.

Quant' mer'.

Indebitatus for money expended in the funeral of defendant's wife.

For money laid
out to the de-
fendant's use.

And for clothes
bought the wife
for two years.

Who died in
plaintiff's house.

[32]

Whereupon in
consideration
plaintiff would
permit defendant
and his friends
to come to bury
her from his
house, assumed,
&c.

that account had paid, laid out and expended: And the same *William James* in fact says, that he the same *William*, in and about the funeral of the said *Susanna* late wife of the said *Charles*, had paid and laid out the sum of 100*l.* at the parish aforesaid in the county aforesaid, whereof the said *Charles* afterwards, to wit, the same day and year last mentioned, there had notice: And whereas also the said *Charles* afterwards, to wit, the first day of *December* in the year last aforesaid, at the parish aforesaid in the county aforesaid, was indebted to the said *William James* in another 100*l.* of like lawful money by the said *William*, to the use of the said *Charles*, and at his instance, before that time laid out and paid: And being so therein indebted the same *Charles* in consideration thereof afterwards, to wit, the same day and year, at the parish aforesaid in the county aforesaid, assumed upon himself, and to the same *William* then and there faithfully promised, to pay him the same sum of money: And whereas also the said *William James*, in the life-time of the said *Susanna* the wife of the said *Charles* and while she was so his wife, had found and provided for the same *Susanna* other meat, drink, washing, lodging and clothes, for the space of two years, and had paid and laid out for the said *Susanna* divers other sums of money for divers other things whereof she had need, amounting in the whole to the sum of 50*l.* of lawful money of this kingdom, and also had lent to the said *Susanna* in her life-time for her necessary support divers other sums of money amounting in the whole to the sum of other 50*l.* of like lawful money of this kingdom: And whereas the said *Susannah* afterwards, and before the said *William James* was paid or satisfied for the said meat, drink, washing, lodging and clothes, or any part thereof, to wit, the first day of *August* in the year of the Lord 1706, in the mansion-house of the said *William James* died, to wit, at the parish aforesaid in the county aforesaid, the said several sums of 50*l.* and 50*l.* last mentioned being to the same *William James* then likewise due and unpaid: And the dead body of the said *Susanna* so in the mansion-house of the said *William James* lying, the said *Charles* afterwards and before the said body was buried, to wit, the same day and year last mentioned, at the parish aforesaid in the county aforesaid, in consideration that he the said *William*, at the special instance and request of the said *Charles*, would permit the said *Charles* and his friends to come into the mansion-house of the said *William James* and bury the body of her the said *Susanna* from the said mansion-house of the said *William James*, assumed upon himself, and to the same *William James* then and there faithfully promised, that he the same *Charles* so much money, as the same *William* for the meat, drink, washing, lodging and clothes last mentioned, by the said *William James* for the same *Susanna* as aforesaid found and provided, reasonably deserved to have, and also the several last mentioned sums of 50*l.* and 50*l.* to the same *William James* well and faithfully would pay and content: And the same *William James*

James in fact says, that he, giving credit to the faithful promise and assumption of the said *Charles* last mentioned in form aforesaid made, afterwards, to wit, the same day and year last mentioned, at the parish aforesaid in the county aforesaid, did permit the said *Charles* and his friends to bury the dead body of the said *Susanna* from the said mansion-house of the said *William James*, and that he the said *William James* for the said meat, drink, washing, lodging and clothes last mentioned, by the said *William James* for the same *Susanna* as aforesaid found and provided, reasonably deserved to have of the said *Charles* other 100*l.* of like lawful money of this kingdom of *England*, to wit, at the parish aforesaid in the county aforesaid; and thereof the said *Charles* afterwards, to wit, the same day and year last mentioned there had notice: And whereas also (thé other count was on an *insimul computassent*): Nevertheless the said, &c.

When, &c. And says that the said *William* his action aforesaid thereof against him ought not to have or maintain, because he says, that the said bill was exhibited the 24th day of *June* in the 8th year of the reign of the said lady the now queen, and not before, and that the said *Charles*, at any time within six years next preceding the exhibition of the bill aforesaid, did not assume upon himself in manner and form as the said *William* above against him complains: And this he is ready to verify: Wherefore he prays judgment if the said *William* his action aforesaid thereof against him the said *Charles* ought to have or maintain, &c.

Plea.
Statute of limitations.
1 Show., 272.

Ro. Raymond.

And the said *William* says that he, by any thing by the said *Charles* above by pleading alledged, from his action aforesaid thereof against him had ought not to be precluded; because he says that he the same *William*, after the making the several promises and assumptions aforesaid in the declaration aforesaid mentioned, and before the day of the exhibition of the bill of the said *William* aforesaid, to wit, in *Michaelmas* term in the fourth year of the reign of the said lady the now queen, prosecuted out of the court of the said lady the queen before the queen herself, the same court then being at *Westminster* in the county of *Middlesex*, a certain writ of the said lady the queen, called a *Latitat*, to the sheriffs of *London* directed, by which said writ the said lady the queen reciting, that whereas the same lady the queen had lately commanded her sheriff of *Middlesex* that he should take the said *Charles Englefield*, bart, if he should be found in his bailiwick, and should keep him safely, so that he should have his body before the said lady the queen at *Westminster* at a certain day then past, to answer to the said *William* in a plea of trespass, and also to the bill of the said *William* against the said *Charles* for 100*l.* upon promise, and farther reciting, that her said sheriff of *Middlesex* at that day returned to the same lady the queen, that the said *Charles* was not found in his bailiwick, and that on the behalf of the said *William* in the said

Replication.
A *Latitat* sued out and continued,

The return.

Another,

The return:

Another,

[33]

The return,

Writs sued out
with intent to
declare in this
action.

court of the said lady the queen before the queen herself it was sufficiently testified, that the said *Charles* did run up and down and secrete himself in the county of the said sheriffs of *London*: Therefore the same lady the queen commanded the same sheriffs of *London* aforesaid that they should take the said *Charles*, if he should be found in their bailiwick, and safely keep him, so that the same sheriffs might have his body before the same lady the queen at *Westminster* on *Wednesday* next after the octave of *St. Hillary*, to answer to the same *William* of the plea and bill aforesaid, and that the same sheriffs should have there then that writ: At which day, before the said lady the queen at *Westminster*, came the said *William* in his proper person, and offered himself against the said *Charles* on the plea and bill aforesaid: And the sheriffs of *London*, to wit, *C. T. knt.* and *S. S. knt.* at that day returned, that the said *Charles Englefield*, bart. was not found in their bailiwick: Therefore the same *William* prayed another writ thereon in form aforesaid, to the sheriffs of *London* aforesaid to be directed; and to him it was granted, returnable before the said lady the queen at *Westminster* on *Wednesday* next after fifteen days of *Easter* then next following: The same day was given to the same *Charles Englefield* there, &c. At which day, before the said lady the queen at *Westminster*, came the said *William* in his proper person, and offered himself against the said *Charles Englefield* on the plea and bill aforesaid: And the sheriffs of *London* aforesaid, to wit, the said *C. T. knt.* and *S. S. knt.* at that day returned, that the said *Charles* was not found in their bailiwick: Therefore the same *William* prayed another writ thereon in form aforesaid, to the sheriffs of *London* aforesaid to be directed; and to him it was granted, returnable before the said lady the queen at *Westminster* on *Wednesday* next after the morrow of the holy *Trinity* then next following: The same day was given to the same *Charles Englefield* there, &c. At which day, before the said lady the queen at *Westminster*, came the said *William* in his proper person, and offered himself against the said *Charles* on the plea and bill aforesaid: And the sheriffs of *London*, to wit, the said *C. T. knt.* and *S. S. knt.* at that day returned, that the said *Charles Englefield* was not found in their bailiwick, as by the records in the court of the said lady the queen now before the queen herself here, to wit, at *Westminster* aforesaid, remaining more fully is manifest and appears: Which said precept and the several aforesaid writs against the said *Charles Englefield*, at the suit of the said *William* as aforesaid prosecuted, were prosecuted with this intent that the said *Charles* might be taken, and to the custody of the marshal of the *Marshalsey* of the court of the said lady the queen, before the queen herself, committed, and that the said *William* might thereupon exhibit his bill against the said *Charles*, and him implead, for the recovery and obtaining of damages by reason of the non-performance of the several promises and assumptions aforesaid in the declaration of the said *William* aforesaid abovementioned, according to the use

use and course of the said court and custom aforesaid: And the said *William* according to his intention aforesaid afterwards, to wit, in the said *Trinity* term in the 8th year of the reign of the said lady the now queen, by his bill aforesaid against the said *Charles Englefield* in form aforesaid hath declared, for the recovery and obtaining of the damages aforesaid in his bill aforesaid contained: And the same *William* farther says, that the said *Charles*, within six years next preceding the prosecution and issuing of the said writ of the said lady the now queen of *Latitat*, assumed upon himself in manner and form as the said *William* above against him complains: And this he is ready to verify: Wherefore he prays judgment and his damages by reason of the non-performance of the several promises and assumptions aforesaid to him to be adjudged, &c. With this, that the same *William* will verify, that the several causes of action in his bill aforesaid abovementioned, and the several writs out of the same court here against the said *Charles*, at the suit of the said *William* prosecuted, were and are one and the same cause of action, and not other nor divers, and that the said *William* now plaintiff in the declaration aforesaid abovenamed, and the said *William* in the said several writs above likewise named, are one and the same person, and not other nor divers, and that the said *Charles* in the declaration aforesaid above named defendant, and the said *Charles Englefield* in the said several writs above likewise named defendant, are one and the same person, and not other nor divers.

Averment that the cause of action in the bill and writs are the same.

And the said *Charles* says, that he the same *Charles*, within six years next preceding the prosecution and issuing of the said writ of the said lady the now queen of *Latitat* in the replication of the said *William* abovementioned, did not assume upon himself in manner and form as the said *William* above against him complains: And of this he puts himself on the country: And the said *William* thereof likewise, &c. Therefore let a jury thereon come before the lady the queen at *Westminster* on day next after And who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Rejoinder, did not assume within six years before the issuing of the writ.

Winter and Wilson.

London, to wit. *N* *Winter* complains of *B. Wilson* in the custody of the marshal, &c. for this, to wit, that whereas the said *B.* on the 1st day of *December* in the 6th year of the reign of the lady *Anne* now queen of *Great-Britain*, &c. at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, in consideration that he the same *N.* at the special instance and request of the said *B.* had transported for the said *B.* divers goods and merchandizes in and upon a certain ship called *The King William galley* (of which said ship the said *N. Winter* was master) from parts beyond the seas to the port of

Assumpsit for freight and average.

* This agrees
with the original.

London aforesaid, * the same *B.* in consideration thereof afterwards, to wit, the same day and year aforesaid, at *London* aforesaid in the parish and ward aforesaid*, assumed upon himself, and to the same *N.* then and there faithfully promised, that he the same *B.* all such sums of money for the freight of the goods and merchandizes aforesaid, as he the same *N.* therefore reasonably deserved to have, together with primage and average therefore accustomed, to the same *N.* when he should be thereto afterwards required, well and faithfully would pay and content: And the same *N.* in fact says, that he the same *N.* for the freight of the goods and merchandizes aforesaid, together with primage and average therefore accustomed, reasonably deserved to have 73*l.* 1*s.* 9*d.* of lawful money of *England*, to wit, at *London* aforesaid in the parish and ward aforesaid, whereof the said *B.* then and there had notice: And whereas also afterwards, to wit, the said first day of *December* in the sixth year aforesaid, at *London* aforesaid in the parish and ward aforesaid, the said *B.* was indebted to the same *N.* in other 73*l.* 1*s.* 9*d.* of like lawful money of *England* for freight, primage and average, of other goods and merchandizes of the said *B.* by him the said *N.* for the said *B.* and at his request, upon another ship called *The King William galley* (whereof the said *N.* then and there was master) from parts beyond the seas unto the port of *London* aforesaid transported, and the said *B.* being so therein indebted, he the same *B.* in consideration thereof afterwards, to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *N.* then and there faithfully promised, that he the same *B.* the said 73*l.* 1*s.* 9*d.* last mentioned to the same *N.* when he should be thereto required, well and faithfully would content and pay: And whereas also afterwards, to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, he the same *B.* was indebted to the said *N.* in other 73*l.* 1*s.* 9*d.* of like lawful money of *England*, for so much money of the said *N.* by him the said *N.* for the said *B.* and at the special instance and request of him the said *B.* before that time paid, laid out and expended; and being so therein indebted, he the same *B.* in consideration thereof afterwards, to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself and to the said *N.* then and there faithfully promised, that he the same *B.* the said 73*l.* 1*s.* 9*d.* last mentioned to the same *N.* when he should be thereto required, would well and faithfully pay and content: Nevertheless the said, &c.

East and South.

[34]
Assumpsit by a
surviving partner
acco. d ng to 8
& 9 W. 3. sug-
gesting the death
of the other.
Pract. Reg. 395.

Midd, to wit. *Richard East* complains of *Robert South* in the custody of the marshal, &c. for this, to wit, that whereas the said *Robert*, on the first day of *April* in the third year of the reign of the lord *George* now king of *Great Britain*,

Britain, &c. at *Westminster* in the county aforesaid, was indebted to the said *Richard* and one *John North* now deceased (whom he the said *Richard* hath survived) in 20*l.* of lawful money of *Great Britain* for divers goods, wares and merchandizes, by him the said *Richard* and the before mentioned *John* in his life-time, and at the special instance and request of the said *Robert*, before that time there sold and delivered; and the said *Robert* being so therein indebted, he the same *Robert* then and there in consideration thereof assumed upon himself, and to the same *Richard* and the before mentioned *John* in his life-time then and there faithfully promised, that he the same *Robert* the said 20*l.* to the same *Richard* and the before mentioned *John* in his life-time, when he should be thereto afterwards required, well and faithfully would pay and content: And whereas also (*the other count as the case is*): Nevertheless the said *Robert* his promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same *Richard* and the before named *John* in the life-time of the said *John*, and the said *Richard* after the death of the said *John*, in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *Richard* and *John* in the life-time of the before named *John*, or to either of them, or to the said *Richard* after the death of the before named *John*, hath not paid or any way for the same contented, (although to do it the said *Robert* by the said *Richard* and *John* in the life-time of the said *John*, and the said *Robert* after the death of the said *John*, was often required,) but the said *Robert* to pay them to the said *Richard* and *John* in the life-time of the said *John*, or to the same *Richard* after the death of the said *John*, hath altogether refused, and the said *Robert* them to the said *Richard* yet to pay doth refuse, to the damage of the said *Richard* East 30*l.* And therefore he produces the suit, &c.

East and West.

Midd, to wit. *William East* complains of *Thomas West* in the custody of the marshal, &c. for this, to wit, that whereas the said *Thomas* and one *Francis Doe* now deceased, (whom he the said *Thomas* survived) on the 2d day of *June* in the year of the Lord 1708, at *Westminster* in the county aforesaid, were indebted to the same *William* in 30*l.* of lawful money of *Great Britain*, for divers goods, wares and merchandizes, by him the same *William* to the same *Thomas* and *Francis* in the life-time of the said *Francis*, and at the special instance and request of them the said *Thomas* and *Francis*, before that time sold and delivered; and being so therein indebted they the same *Thomas* and *Francis*, in the life-time of the said *Francis* then and there in consideration thereof, assumed upon themselves, and to the same *William* then and there faithfully promised, that they the said *Thomas* and *Francis* in the life-time of the said *Francis*

Assumpsit against a surviving partner pursuant to 8 & 9 W. 3. Pract. Reg. 395.

Francis the said 30*l.* to the same *William*, when they should be thereto afterwards required, well and faithfully would pay and content: And whereas also, &c. (other counts as the case requires): Nevertheless the said *Thomas* and *Francis* in the life-time of the said *Francis*, and the said *Thomas* after the death of the said *Francis*, their several promises and assumptions aforesaid in form aforesaid made not regarding, nor either of them any way regarding, but contriving and fraudulently intending the same *William* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *William* have not paid, nor hath either of them paid, altho' to do it the same *Thomas* and *Francis* in the life-time of the said *Francis*, afterwards, to wit, the day of in the year at *Westminster* aforesaid in the county aforesaid, and the said *Thomas* after the decease of the before named *Francis*, to wit, the day of in the year above said, at *Westminster* aforesaid, by the said *William* were required, but the said *Thomas* and *Francis* in the life-time of the said *Francis*, and the said *Thomas* after the death of the said *Francis*, them to the said *William* to pay, or any way for the same to content, have altogether refused, and the said *Thomas* them to the same *William* hitherto to pay doth altogether refuse, to the damage of him the said *William* 40*l.* And therefore he produces the suit, &c.

[35]

Brook and Tayler.

Case for maliciously arresting plaintiff in the sheriff's court, where the cause was removed by *Habeas Corpus* into the King's Bench.

London, to wit. **H**enry Brook the younger complains of *John Tayler* in the custody of the marshal, &c. for this, to wit, that whereas the said *John* contriving and maliciously intending the same *Henry* unjustly to injure and oppress, and to cause him to be kept and detained in prison for want of bail, on the 23d day of *November* in the 12th year of the reign of the lady *Anne* late queen of *Great Britain*, &c. at *London* aforesaid in the parish of *St. Mary-le-bow* in the ward of *Cheape*, and within the jurisdiction of the court of the said lady the late queen, held before *J. Sharpe*, esq; one of the sheriffs of the city of *London*, did cause and procure him the said *Henry* to be arrested and imprisoned by pretence and colour of a certain plaint in the said court of the said late lady the queen held before the said sheriff at *London* aforesaid in the parish and ward aforesaid, the same day and year, at the suit of him the said *John* in a plea of trespass on the case, to the damage of the said *John* 500*l.* against him the said *Henry* entred and levied, when in truth and in fact the said *John*, at the said time of the arrest and imprisonment aforesaid, had no probable cause of action against him the said *Henry*, and the said *Henry*, under that arrest in prison at *London* aforesaid in the parish and ward aforesaid, always from the time of the arrest of the said *Henry* aforesaid until and upon the 10th day of *December* in the 12th year of the reign of the said late queen above said, did cause to be detained for want

of

of sufficient bail and security to answer the said *John* in the plea aforesaid for the said great pretended damages; on which said 10th day of *December* in the 12th year above said, the same *Henry*, by virtue of a certain writ of the said late queen to have the body with the cause, to the mayor, aldermen and sheriffs of *London* directed by the beforenamed *J. Sharpe* and one *Francis Forbes*, esq; then being sheriffs of *London* aforesaid, was brought in custody before *Robert Eyre*, knt. then one of the justices of the said late lady the queen, assigned to hold pleas in the court of the said lady the queen before the queen herself, at his chamber situate in *Serjeants Inn* in *Chancery-lane* in the parish of *St. Dunstan* in the *West* in the ward of *Farringdon* without, and then and there, for want of bail and security to answer the said *John* in the plea aforesaid, was by the same justice committed to the custody of the marshal, &c. at the suit of the said *John* in the plea aforesaid, as by the writ to have the body of the said *Henry* and the return thereof, and the commitment of the said *Henry* in the court of the lord the king, now before the king himself at *Westminster* remaining on record filed, is more fully manifest and appears; by virtue of which said commitment *M. C.* esq; then marshal of the *Marshalsey* of the said court of the said late queen before the queen herself afterwards, to wit, the said 10th day of *December* in the 12th year of the reign of the said late lady the queen above said, him the said *Henry* into his custody received and had, and him the said *Henry* in his custody in the said prison of the said late lady the queen always from thence afterwards until the 14th day of *October* then next following, for want of bail to answer the said *John* in the plea aforesaid, did detain without any bill or declaration against him the said *Henry* in the cause aforesaid exhibited, delivered or filed in the said court of the said late lady the queen before the queen herself, and without any prosecution whatever in that cause or action: Therefore it was considered by the same court of the said queen before the queen herself, that the said *John* should take nothing by his plaint aforesaid, but that he and his pledges, to wit, *John Doe* and *Richard Roe*, should be therefore in mercy, and that the said *Henry* might go thence without day: And on that account the same *Henry* afterwards, to wit, the same day and year last mentioned, by virtue of a certain writ of the said late lady the queen of *superseas* out of the said court of the said lady the queen issued and prosecuted to the marshal of the *Marshalsey* of the said lady the queen before the queen herself directed and delivered, commanding the same marshal that he should without delay cause the said *Henry* to be delivered from the prison of the said then lady the queen aforesaid, in which he then was detained, according to the direction of that writ, as by the said writ in the court of the now lord the king before the king himself on record remaining filed more fully is manifest and doth appear; when in truth and in fact the said *John Tayler*, at the said time of the levying the plaint aforesaid in the said court of the said

Habeas Corpus
sued out.

Plaintiff not de-
claring was non-
sued.

said late lady the queen before the said sheriff of *London* against the said *Henry*, or at any other time before or after, had no probable cause of action whatsoever against him the said *Henry* for the said pretended damage of 500 *l.* or any part thereof, nor any colour or pretence to arrest him the said *Henry* for the said 500 *l.* or any part thereof; by reason of which said unjust and malicious arrest and imprisonment of the said *Henry*, the same *Henry* not only for all the time aforesaid in prison was detained, and of his liberty deprived, but also the same *Henry* great trouble and expences for his discharge from his imprisonment aforesaid underwent and sustained, and to undergo and sustain was obliged and compelled, to wit, at *London* aforesaid in the parish and ward aforesaid above first mentioned; whereby the same *Henry* says that he is prejudiced, and has damage to the value of 500 *l.* And therefore he produces the suit, &c.

[36]

Elmes and Heath.

Assumpsit by an apothecary for medicaments and his attendance in curing the defendant's son.

London, to wit. *John Elmes* complains of *William Heath* in the custody of the marshal, &c. for this, to wit, that whereas the said *William* on the 10th day of *June* in the third year of the reign of the lord *William* the third, now king of *England*, &c. at *London*, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, was indebted to the same *John* in 30 *l.* of lawful money of *England*, as well for divers medicaments, ointments, plaisters, fomentations and other necessities by him the said *John* at the special instance and request of the said *William* in and about the curing of one *Edward Heath*, the son of the said *William*, of divers infirmities and pains wherewith the said *Edward* before that time laboured and languished, found, provided, applied and administered, as for the work and labour of the said *John* in and about the application and administration of the medicaments, plaisters, ointments, fomentations and other necessities to the said *Edward* by him the said *John* done and performed; and being so therein indebted the same *William* in consideration thereof assumed upon himself, and to the same *John* then and there faithfully promised, that he the same *William* the said 30 *l.* to the same *John*, when he should be thereto afterwards required, would well and faithfully pay and content: And whereas also the said *William* afterwards, to wit, the same day and year aforesaid, at *London* aforesaid in the parish and ward aforesaid, in consideration that the said *John* at the like instance and request of the said *William* had at the proper costs and charges of the said *John* found, provided, applied and administered divers other medicaments, plaisters, ointments, fomentations and other necessities in and about the cure of the said *Edward* of divers other infirmities and pains wherewith the said *Edward*, the son of the said *William*, laboured and languished, assumed upon himself, and to the same *John* then and there faithfully promised, that he the same *William* not only so much money, as the medicaments, plaisters,

plaisters, ointments and fomentations, and other things necessary aforesaid last mentioned, so as aforesaid applied and administered, were reasonably worth, but also so much money, as the same *John* for the finding, providing, administering and applying thereof reasonably deserved, to the same *John*, when he should be thereto afterwards required, would well and faithfully pay and content: And the same *John Elmes* in fact says, that the medicaments, plaisters, ointments, fomentations and other necessities last mentioned, by him the said *John* so as aforesaid found and provided, applied and administered, were reasonably worth other 30*l.* of like lawful money of *England*; and that he the same *John* for the finding and providing, applying and administering the medicaments, plaisters, ointments and other necessities aforesaid last mentioned, reasonably deserved to have other 30*l.* of like lawful money of *England*, at *London* aforesaid in the parish and ward aforesaid: And thereof the said *William* afterwards, to wit, the same day and year last mentioned, at *London* aforesaid in the parish and ward aforesaid had notice: And whereas also the said *John*, at the special instance and request of the said *William*, at *London* aforesaid in the parish and ward aforesaid, had found and provided for the said *Edward Heath*, the son of the said *William*, sufficient meat, drink, washing and lodging for the space of four months and a half, the said *William* in consideration thereof afterwards, to wit, the said 10th day of *June* in the third year of the reign of the said lord the now king above said, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *John* then and there faithfully promised, that he the same *William* so much money, as the same *John* therefore reasonably deserved to have, to the same *John* well and faithfully would pay and content: And the same *John Elmes* in fact says, that he the same *John* therefore reasonably deserved to have other 30*l.* of like lawful money of *England*, to wit, at *London* aforesaid in the parish and ward aforesaid, and thereof the said *William* then and there had notice: And whereas also, &c. (the other count for goods sold): Nevertheless the said *William*, &c.

Saunders, Esq; against The Sheriff of Middlesex.

[37]

Midd, to wit. *John Saunders*, esq; complains of *S. G. bart.* and *R. B. knt.* late sheriff of the county of *Middlesex* aforesaid [* in the custody of the marshal, &c.] for this, to wit, that whereas the said *John* on the 19th day of *October* in the year of the Lord 1702, in the parish of *St. Clement Danes* in the said county of *Middlesex*, was possessed of a bed, a bedstead, a bolster, a pillow, six curtains, six valiance, six pair of linen sheets, three blankets, one quilt, a scrutore, a snuff-box, a set of gold buttons, two looking-glasses, a table, two stands, a dressing-box, two large brushes, a trunk, a large cover, seven open chairs, six cloth suits, a riding coat, two dozen of shirts,

* These words are not in the original. Case against the sheriff of *Middlesex* for not taking sufficient bail on a replevin. The plaintiff is possessed of goods in *Middlesex*.

The defendants
sheriff of the
county.

Who on a pre-
tended plaint
levied in replevin
by a third person
delivered them
to him, without
sufficient sureties
to prosecute.

Plaint removed
into B. R.

A return adjudg-
ed to the plain-
tiff.

shirts, twenty-four neckcloths, a saddle, two pistols, three pair of boots, twelve pair of shoes, six pair of stockings, a marble chimney-piece, six firestones, forty yards of wainscot, three fash-windows, thirty deal boards, a stove, a fireshovel, a pair of tongs, a pitchfork, a pair of bellows, a clock case, a silver watch, a silver salver, six silver dishes, a silver tankard, two silver porringers with a silver cover, two silver candlesticks, two silver snuffers, three swords, four hats, three periwigs, a cane, a steel seal, a case of the same seal, two night-gowns, and sixty books, to the value of 200*l.* as of his own proper goods and chattels: And whereas also the said *Samuel* and *Robert* on the same day and year, and long before and after, were sheriff of the same county of *Middlesex*, and the said *John* so of the goods and chattels aforesaid in form aforesaid possessed, and the said *Samuel* and *Robert* so as aforesaid being sheriff of the same county of *Middlesex*, the duty of their said office not considering, but contriving and fraudulently intending the said *John* of his goods and chattels aforesaid to deceive and defraud, on the same day and year aforesaid, at the said parish of *St. Clement Danes* in the said county of *Middlesex*, by colour of their office aforesaid, the goods and chattels aforesaid at the parish of *St. Clement Danes* aforesaid being found, at the plaint of one *William Presgrave*, pretending the same goods and chattels were the proper goods and chattels of the said *William Presgrave*, and to the same *William Presgrave* of right did belong and appertain, and that the said *John* had taken the goods and chattels aforesaid, and the same unjustly detained against surety and pledges, caused the goods and chattels aforesaid to be replevied from the possession of the same *John Saunders*, and the said goods and chattels to be delivered to the said *William Presgrave* did cause and procure without sufficient surety and pledges, or any sufficient security had or taken to prosecute the said plaint of him the said *William Presgrave* against the said *John* for the caption and unjust detention of the goods and chattels aforesaid, and to make a return of the same goods and chattels to the same *John Saunders*, if a return of the same should be adjudged to the same *John Saunders*, as by the law and custom of the kingdom of *England*, and the duty of their office aforesaid, they ought to have done: Which said plaint afterwards by due process of law into the court of the lady the now queen before the queen herself, wheresoever, &c. was transmitted: And whereas also afterwards, to wit, in *Easter* term in the year of the reign of the said lady the now queen, he the same *John Saunders* thereon was summoned into the court of the said lady the queen before the queen herself at *Westminster*, to answer to the same *William Presgrave* in a plea why he took the goods and chattels aforesaid; and thereupon it was in such manner proceeded that by the same court at *Westminster* it was considered, that the said *John Saunders* should have a return of the goods and chattels aforesaid to be detained by him irreplegable for ever; which said judgment yet remains
and

Action on the case.

‡ 37

and is in its full force and vigour not reversed or annulled; and that the goods and chattels aforesaid, to the said *William Presgrave*, by reason of the replevin aforesaid, so as aforesaid delivered, to places obscure and unknown are eloined, whereby they cannot be returned or delivered to the same *John*; and the said *John* the goods and chattels aforesaid by the occasion aforesaid hath wholly lost, and is without remedy, to the damage of the said *John* 200 *l.* And therefore he produces the suit, &c.

The goods eloined.

Browne and Davis.

[38]

Midd., to wit. *William Browne* complains of *John Davis* in the custody of the marshal, &c. for this, to wit, that whereas the said *William* on the 6th day of *March* in the 4th year of the reign of the lady *Anne* now queen of *England*, &c. at the parish of *Chelsea* in the county aforesaid, was lawfully possessed of a certain flat-bottomed boat then loaded with dung, and riding at anchor in the river *Thames* within the parish aforesaid, as of his own proper boat: And the said *John Davis* then and there was master and pilot of a certain barge then sailing in the river *Thames* aforesaid within the parish aforesaid towards the city of *London*, and that the said *John Davis* then and there his said barge so negligently, carelessly and unskillfully managed and steered, that the said barge, for want of good and sufficient care and management thereof, in and upon the said boat of him the said *William* so as aforesaid loaded then and there fell foul, and the said boat broke and sunk; and the said *William* by reason thereof not only his dung aforesaid in the said boat loaded totally lost, but likewise lost the whole use, profit and benefit of his said boat for the space of six days then next following, and also expended and laid out great sums of money in and about the raising and repairing of his said boat; whereby the said *William* says that he is prejudiced, and hath damage to the value of 30 *l.* And therefore he produces the suit, &c.

Case against the master of a hoy for falling foul of and sinking plaintiff's dung-boat.

Shish and Keech.

London, to wit. *Jonas Shish*, debtor to the now lady the queen, comes before the barons of this exchequer 16th day of *June* in this term by *T. Owen* his attorney, and complains by bill against *William Keech*, present here in court the same day, in a plea of trespass on the case for this, to wit, that whereas the said *William* on the first day of *May* in the second year of the reign of the lady *Anne* now queen of *England*, &c. at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, was indebted to the same *Jonas* in 300 *l.* for the use and occupation of a dock of the said *Jonas*, situate and being in *Rotherhith* in the county of *Surrey*, by the same *William*, with a certain ship called the *Joseph*, by the permission of the said *Jonas*, at the instance of the said *William*,
for

Assumpsit for the use of a dock.

for a long time then lately elapsed used and occupied; and being so therein indebted the same *William* in consideration thereof afterwards, to wit, the same day and year, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *Jonas* then and there faithfully promised, to pay him the same sum of money: And whereas also the said *William* afterwards, to wit, the third day of *May* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, in consideration that the said *Jonas*, at the like instance of the said *William*, had permitted the same *William* for a long time then lately elapsed to have the use and occupation of the said dock, with another ship called the *Joseph*, assumed upon himself, and to the same *Jonas* then and there faithfully promised, to pay him so much money as he for the said use and occupation thereof reasonably deserved to have: And the same *Jonas* in fact says, that for the use and occupation aforesaid he the same *Jonas* reasonably deserved to have of the said *William* another sum of 300*l.* to wit, at *London* aforesaid in the parish and ward aforesaid, whereof the said *William* the day and year last aforesaid there had notice: And whereas also the said *William* afterwards, to wit, the sixth day of *May* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, was indebted to the same *Jonas* in other 300*l.* for work and labour by the said *Jonas* by himself and his servants at the like instance of the said *William* before then done and bestowed on and about another ship called the *Joseph*, and for materials and things necessary in and about that work, at the request of the said *William* by the said *Jonas* found and provided; and being so therein indebted, the same *William* in consideration thereof afterwards, to wit, the same day and year, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *Jonas* then and there faithfully promised, to pay him the same sum of money: And whereas also the same *William* afterwards, to wit, the 8th day of *May* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, in consideration that the said *Jonas*, at the like instance of the said *William*, by himself and his servants had before that time done and bestowed other work and labour on and about another ship called the *Joseph*, and other materials and things necessary in and about that work had found and provided, assumed upon himself, and to the same *Jonas* then and there faithfully promised, to pay him so much money as he therefore reasonably deserved to have: And the same *Jonas* in fact says, that he therefore reasonably deserved to have of the said *William* another sum of 300*l.* to wit, at *London* aforesaid in the parish and ward aforesaid, whereof the said *William* the day and year last aforesaid there had notice: And whereas also the said *William* afterwards, to wit, 20th day of *May* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, was indebted to the same *Jonas* in other 300*l.* for divers wares and merchandizes by the same *Jonas* to the said *William* before then sold

Quantum meruit
for work, labour
and materials.
Salk. 710.

[39]

Sold and delivered; and being so therein indebted the same William in consideration thereof afterwards, to wit, the same day and year at London aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same Jonas then and there faithfully promised, to pay him the same sum of money: And whereas also the same William, 25th day of May in the year aforesaid, at London aforesaid in the parish and ward aforesaid, in consideration that the said Jonas, at the instance of the said William, divers other wares and merchandizes to him then before had sold and deliver'd, assumed on himself, and to the same Jonas then and there faithfully promised, to pay him so much money as he therefore reasonably deserved to have: And the same Jonas in fact says, that he therefore reasonably deserved to have of the said William another sum of 300*l.* to wit, at London aforesaid in the parish and ward aforesaid, whereof the said William the day and year last aforesaid there had notice: Nevertheless the said William his several promises and assumptions aforesaid not regarding, but contriving and fraudulently intending the same Jonas in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same Jonas (although to do it by the same Jonas afterwards, to wit, on the first day of June in the year aforesaid, at London aforesaid in the parish and ward aforesaid, he was required) hath not yet paid, but them to him hitherto to pay hath altogether denied, and yet doth deny, to the damage of the said Jonas 533*l.* By which the less, &c. And therefore he produces the suit, &c.

Quantum meruit
for goods sold.

Blackley and Cox.

Leicester, to wit. *Mary Blackley*, widow, complains of *Joseph Cox* in the custody of the marshal, &c. for this, to wit, that whereas the said *Joseph*, on the first day of January in the sixth year of the reign of the lady the now queen, at Lutterworth in the county aforesaid, was indebted to the same *Mary* in 30*l.* of lawful money of this kingdom for meat, drink, washing, lodging and necessary apparel, by the same *Mary* for one *Thomas Cox* the son of the said *Joseph*, at the instance of the said *Joseph*, before that time found and provided, and for money by the same *Mary* to the use of the said *Joseph*, at his request, then before laid out and paid; and being so therein indebted the same *Joseph* in consideration thereof afterwards, to wit, the same day and year at Lutterworth aforesaid in the county aforesaid, assumed upon himself, and to the same *Mary* then and there faithfully promised, to pay her the same sum of money: And whereas also the said *Joseph* afterwards, to wit, the 20th day of January in the sixth year aforesaid, at Lutterworth aforesaid in the county aforesaid, in consideration that the same *Mary*, at the like instance of the said *Joseph*, other meat, drink, washing, lodging and necessary apparel, for the said *Thomas* had found and provided, assumed upon himself, and to the same *Mary* then

Assumpsit for
det, washing
and lodging, and
necessaries pro-
vided for defend-
ant's son.

and there faithfully promised, to pay her so much money as she therefore reasonably deserved to have: And the same *Mary* in fact says, that she therefore reasonably deserved to have of the said *Joseph* another sum of 30*l.* of like money, to wit, at *Lutterworth* aforesaid in the county aforesaid, whereof the said *Joseph* the day and year aforesaid there had notice: And whereas also the said *Joseph* afterwards, to wit, 27th day of *January* in the sixth year aforesaid, at *Lutterworth* aforesaid in the county aforesaid, in consideration that the same *Mary*, at the request of the said *Joseph*, a large sum of money, to wit, 20*l.* of like money of this kingdom, had laid out and paid for the instruction and education of the said *Thomas*, the son of the said *Joseph*, in literature and good manners, and also in putting the same son apprentice to one *William Neale* to learn the art of a shoemaker, assumed upon himself, and to the same *Mary* then and there faithfully promised, to pay her that sum last mentioned: And whereas also the said *Joseph* afterwards, to wit, on the 28th day of *January* in the sixth year aforesaid, at *Lutterworth* aforesaid in the county aforesaid, in consideration that the same *Mary*, at the request of the said *Joseph*, other meat, drink, washing, lodging and necessary apparel for his son aforesaid had found and provided, and divers other sums of money, for the instruction and education of the same son in literature and good manners, had laid out and paid, assumed upon himself, and to the same *Mary* then and there faithfully promised, to pay her other 30*l.* therefore: And whereas also the said *Joseph* afterwards, to wit, 30th day of *January* in the 6th year aforesaid, at *Lutterworth* aforesaid in the county aforesaid, accounted with the same *Mary* for several sums of money by the same *Joseph* to the same *Mary* before then due, and being then unpaid; and upon that account the said *Joseph* was found in arrear to the same *Mary* in another sum of 30*l.* at *Lutterworth* aforesaid in the county aforesaid; and being so found therein in arrear the said *Joseph* in consideration thereof assumed upon himself, and to the same *Mary* then and there faithfully promised, to pay her the same sum of money: Nevertheless the said, &c.

[40]

Austin and Huggins.

Case against the
high bailiff of
Westminster for a
false return of a
Fi fac.

Midd., to wit. **R**obert *Austin* complains of *John Huggins*, esq; bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter Westminster* in the county of *Middlesex* aforesaid, in the custody of the marshal, &c. for this, to wit, that whereas the same *Robert* otherwise, to wit, in *Trinity* term last past in the court of the lady the queen before the queen herself, (the same court being at *Westminster* in the county of *Middlesex*), by the consideration of the same court did recover against one *William Stratford*, otherwise called *William Stratford* of the parish of *St. James's Westminster* in the county of *Middlesex*, gent. 55*l.* for a debt, and also 30*s.* for his

His damages which he had sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he was convicted; and afterwards, to wit, 25th day of *June* last past, the said *Robert*, for the recovery of the debt and damages aforesaid, prosecuted out of the court of the said lady the now queen before the queen herself (the same court being at *Westminster* in the county of *Middlesex* aforesaid) a certain writ of the said lady the queen of *fiery facias* to the sheriff of *Middlesex* aforesaid directed, by which said writ the same lady the queen commanded the said sheriff, that of the goods and chattels of the said *William* in his bailiwick he should cause to be made the said 55*l.* for the debt, as also 30*s.* for the damages aforesaid; and that he should have that money before the said lady the queen at *Westminster* on *Wednesday* next after three weeks of *St. Michael* then next following, to render to the said *Robert* for the debt and damages aforesaid: Which said writ afterwards, and before the return thereof, to wit, on the 17th day of *August* in the first year of the reign of the said lady the now queen, at the parish of *St. Martin in the Fields* in the county of *Middlesex* aforesaid, was delivered to *William Withers*, knt. and *James Bateman*, knt. then being sheriff of the county of *Middlesex* aforesaid, in due form of law to be executed; which said sheriff then and there, to wit, the same 17th day of *August* in the first year aforesaid, in the parish and county aforesaid, at the request of the said *Robert* made his warrant in writing, under the seal of the office of sheriff aforesaid, of and upon the said writ of *fiery facias*, and the same warrant to the bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter Westminster* in the county aforesaid directed; which said bailiff of that liberty then had and as yet has the full execution and return of all warrants, writs and mandates within the same liberty; by which said warrant the said sheriff of the county of *Middlesex* aforesaid then and there, by virtue of the said writ of the said lady the queen to the same sheriff as aforesaid directed and delivered, commanded the said bailiff of the said liberty, that of the goods and chattels of the said *William* in the bailiwick of the said bailiff he should cause to be made the said 55*l.* which the said *Robert* had recovered against the said *William* for the debt, as also 30*s.* for the damages of the said *Robert* whereof he was convicted, so that he might have that money before the said lady the queen at *Westminster* on the said *Friday* next after three weeks of *St. Michael*, to render to the said *Robert* for the debt and damages aforesaid: Which said warrant the said *Robert* afterwards, and before the return thereof, to wit, on the 18th day of *August* in the first year aforesaid, at *Westminster* aforesaid, to the said *John Huggins* then and yet bailiff of the liberty aforesaid, and the execution and return of all writs, precepts and mandates within the same liberty then and there having, delivered in due form of law to be executed: By virtue of which

The writ delivered to the sheriff.

Warrant to the high bailiff.

Who levied the debt.

Action on the case.

And to defraud
the plaintiff re-
turned no goods.

[41]

said warrant the same bailiff of the liberty aforesaid afterwards, and before the return of that warrant, to wit, on the 20th day of *August* in the first year abovesaid, at the parish aforesaid within his liberty aforesaid, levied several goods and chattels of the said *William* to the value of the debt and damages aforesaid: Nevertheless the said *John* being bailiff of the liberty aforesaid afterwards, at the return of the said writ, to wit, on the said *Friday* next after three weeks of *St. Michael*, before the said queen at *Westminster* aforesaid in the county of *Middlesex* aforesaid, falsely and deceitfully, and in deceit of the said court of the lady the queen before the queen herself, and to defraud the said *Robert* of his debt and damages aforesaid, returned to the said sheriff on and upon the warrant aforesaid, that the said *William* had no goods or chattels in his bailiwick whereof he could cause the debt to be made the debt and damages aforesaid, or any part thereof, as he by the warrant aforesaid was commanded, when in truth and in fact the same *John Huggins* as bailiff of the liberty aforesaid within the same bailiwick, to wit, at the parish aforesaid in the county aforesaid, by virtue of the warrant aforesaid so as aforesaid made, and to the same *John Huggins* as bailiff of the liberty aforesaid directed and delivered, had levied several goods and chattels of the said *William Stratford* to the value of the debt and damages aforesaid, whereby the said *Robert* says that he is prejudiced, and hath damage to the value of 60*l.* And therefore he produces the suit, &c.

Eastman and Butler.

Assumpsit by assignees of two bankrupts on promissory notes given by defendant's servant for defendant, payable to the bankrupts.

London, to wit. *Theobald Butler* late of *London* merchant, was attached to answer to *Nehemiah Eastman* and *Richard Merry* assignees of the debts, goods and chattels of *Daniel Marcon* and *Andrew Solirel* bankrupts, according to the form of the statutes of bankrupts lately made and provided, in a plea of trespass on the case, &c. And whereon the same *Nehemiah* and *Richard* by *John Page* their attorney complain, why whereas the said *Daniel* and *Andrew*, at the time of the making of the several promissory notes hereafter mentioned, were in company and partners in the business of merchandizing, one *Richard Butler* after the first day of *May* in the year of the Lord 1705, to wit, on the 18th day of *August* in the year of the Lord 1714, then being an agent of the said *Theobald* then being a merchant, and by the said *Theobald* usually intrusted to make and sign promissory notes for the payment of money for him the said *Theobald*, at *London* aforesaid in the parish of *St. Mary-le-bow* in the ward of *Cheape*, made a certain promissory note in writing, with the proper hand of the said *Richard Butler* subscribed, bearing date the same day and year last abovesaid, and by the same note promised to pay to the said *Daniel* and *Andrew*, by the name of *Messieurs Marcon* and company, or order 200*l.* sterling,

King, three months and 15 days after the date of the same note, value received for his master the said *Theobald Butler*; by reason whereof, and by force and virtue of the statute in such case made and provided, the same *Theobald* ought to be charged; and was chargeable to pay to the same *Daniel* and *Andrew* the said 200*l.* in the note aforesaid mentioned: And so being chargeable with the payment thereof, the said *Theobald* in consideration thereof, afterwards, to wit, the 9th day of *May* in the year of the Lord 1715, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself and to the same *Nehemiah* and *Richard* then and there faithfully promised, that he the said *Theobald* the said 200*l.* in the note aforesaid mentioned to the said *Nehemiah* and *Richard*, when he should be thereto afterwards required, well and faithfully would pay and content: And whereas also afterwards, and after the said first day of *May* in the year of the Lord 1705, to wit, the said 18th day of *August* in the year of the Lord 1714, he the said *Richard Butler* then being agent of the said *Theobald*, and by him usually intrusted to sign promissory notes for the said *Theobald* for the payment of the money in the same mentioned to the person or persons in the same named, at *London* aforesaid in the parish and ward aforesaid, made a certain other promissory note in writing with the proper hand of the said *Richard Butler* subscribed, bearing date the same day and year last aforesaid, and by the same note promised to pay to the said *Daniel* and *Andrew*, by the name of Messieurs *Marcon* and company, or order, 143*l.* 10*s.* sterling, three months and 15 days after the date of the same note, value received for his said master the said *Theobald Butler*; by reason whereof, and by virtue of the statute in such case lately made and provided, the same *Theobald* became liable to pay to the said *Daniel* and *Andrew* the said 143*l.* 10*s.* in the note aforesaid last mentioned; and so being liable to the payment thereof, the said *Theobald* in consideration thereof afterwards, to wit, the said 9th day of *May* in the year of the Lord 1715 aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *Nehemiah* and *Richard* then and there faithfully promised, that he the said *Theobald* the said 143*l.* 10*s.* in the same note last mentioned to the same *Nehemiah* and *Richard*, when he should be thereto required, well and faithfully would pay and content: And whereas also afterwards, and after the 1st day of *May* in the year of the Lord 1705, to wit, the said 18th day of *August* in the year of the Lord 1714 aforesaid, the said *Richard Butler* then being agent of the said *Theobald*, and by him usually intrusted to sign promissory notes for him the said *Theobald* for the payment of money in the same mentioned to the person or persons in the same named, at *London* aforesaid in the parish and ward aforesaid, made a certain other promissory note in writing, with the proper hand of the said *Richard* subscribed, bearing date the same day and year last aforesaid, and by the same note promised to pay to the said *Daniel*

3 & 4 Anne,
c. 9.

[42]

Assumpsit for
goods of the
bankrupts de-
livered by them
to the defendant.

and *Andrew*, by the name of Messieurs *Marcon* and company, or order, 171*l.* 15*s.* sterling, six months and fifteen days after the date of the same note, value received for his master the said *Theobald Butler*, by reason whereof, and by virtue of the statute in such case lately made and provided, the same *Theobald* ought to be charged, and was chargeable to pay to the same *Daniel* and *Andrew* the said 171*l.* 15*s.* in the note aforesaid last mentioned contained: And being so chargeable the same *Theobald* in consideration thereof afterwards, to wit, the said ninth day of *May* in the year of the Lord 1715 aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *Nehemiah* and *Richard* then and there faithfully promised, that he the said *Theobald* the said 171*l.* 15*s.* in the note aforesaid mentioned to the said *Nehemiah* and *Richard*, when he should be thereto afterwards required, would well and faithfully pay and content: And whereas also afterwards, and after the said first day of *May* in the year of the Lord 1705 aforesaid, to wit, the said 18th day of *August* in the year of the Lord 1714, the said *Richard Butler* then being agent of the said *Theobald*, and by him usually intrusted to sign promissory notes for the payment of the money therein mentioned to the person or persons therein named for him the said *Theobald*, at *London* aforesaid in the parish and ward aforesaid, made a certain other promissory note in writing, with the proper hand of the said *Richard Butler* subscribed, bearing date the same day and year last aforesaid, and by the same note promised to pay to the said *Daniel* and *Andrew*, by the name of Messieurs *Marcon* and company, or order, 172*l.* 2*s.* 10*d.* sterling, six months and fifteen days after the date of the same note, value received for his master the said *Theobald Butler*; by reason whereof, and by force and virtue of the statute in such case lately made and provided, the same *Theobald* became liable to pay to the same *Daniel* and *Andrew* the said 172*l.* 2*s.* 10*d.* in the same note last mentioned contained; and being so liable to the payment thereof, the same *Theobald* in consideration thereof afterwards, to wit, the said 9th day of *May* in the year of the Lord 1715 aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *Nehemiah* and *Richard* then and there faithfully promised, that he the said *Theobald* the said 172*l.* 2*s.* 10*d.* in the same note mentioned to the said *Nehemiah* and *Richard*, when he should be thereto afterwards required, would well and faithfully pay and content: And whereas also the said *Theobald* afterwards; to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, was indebted to the same *Nehemiah* and *Richard*, as assignees of the debts of the said *Daniel* and *Andrew*, being bankrupts as aforesaid, in 695*l.* 15*s.* of lawful money of this kingdom for divers goods, wares and merchandizes of the said *Daniel* and *Andrew*, and by them the said *Daniel* and *Andrew* to the same *Theobald* at his instance then before sold and delivered; and being therein so indebted the said *Theobald* afterwards, to wit, the same day,

day, year and place last abovesaid, in consideration thereof assumed upon himself, and to the same *Nehemiah* and *Richard* then and there faithfully promised, that he the said *Theobald* the said 695*l.* 15*s.* to the same *Nehemiah* and *Richard*, when he should be thereto afterwards required, would well and faithfully pay and content: And whereas also the said *Theobald* afterwards, to wit, the same day, year and place last abovesaid, in consideration that the said *Daniel* and *Andrew* at the request of the said *Theobald* before that time had sold and delivered to the same *Theobald* divers other goods, wares and merchandizes of them the said *Daniel* and *Andrew*, assumed upon himself, and to the same *Nehemiah* and *Richard*, as assignees of the debts of the said *Daniel* and *Andrew*, being bankrupts as is aforesaid, faithfully promised to pay them so much money, as the goods, wares and merchandizes aforesaid last mentioned at the time of the sale and delivery of the same were worth: And the same *Nehemiah* and *Richard* in fact say, that the goods, wares and merchandizes last mentioned, at the time of the sale and delivery of the same to the said *Theobald*, were reasonably worth another sum of 695*l.* 15*s.* of like lawful money, to wit, at *London* aforesaid in the parish and ward aforesaid, whereof the said *Theobald* then and there had notice: Nevertheless the said *Theobald*, &c.

Quantum meruit.

Infes and Kirwood.

London, to wit. *Matthew Kirwood* late of *London*, knt. was attached to answer to *Margery Infes*, widow, executrix of the last will and testament of *Michael Infes* her late husband deceased, in a plea of trespass on the case, &c. And whereon the said *Margery* by *E. C.* her attorney complains, why whereas the said *Matthew* on the 5th day of *April* in the year of the Lord 1712, at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, in consideration that the said *Michael* in his life-time then and there at the special instance and request of the said *Matthew* had paid unto the said *Matthew*, to the proper use of the said *Matthew*, the sum of 118*l.* 11*s.* 5*d.* of lawful money of this kingdom, assumed upon himself, and to the said *Michael* in his life-time then and there faithfully promised, that he the said *Matthew* 118*l.* 11*s.* 5*d.* of *South-Sea* stock, with all dividends for the same, to the said *Michael*, when he should be thereto after required, would transfer: Nevertheless the said *Matthew* his promise and assumption aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the said *Michael* in his life-time, and the same *Margery* after the decease of the said *Michael*, in this behalf to deceive and defraud, hath not transfer'd to the said *Michael* in his life-time, or to the same *Margery* after his decease, the said 118*l.* 11*s.* 5*d.* *South-Sea* stock, nor any part thereof, altho' to transfer it to the said *Michael* the said *Matthew* by the said *Michael* in his life-time afterwards, to wit, the same day and year abovesaid, at *London*

Assumpsit by an executor for not transferring *South-Sea* stock, and the dividend for the same.

aforesaid in the parish and ward aforesaid, was required, and altho' to transfer it to the same *Margery* after the death of the said *Michael*, to wit, the first day of *January* in the year of the Lord 1717, at *London* aforesaid in the parish and ward aforesaid, he was required; and the same *Margery* then and there was ready to receive it from the said *Matthew*, but to transfer it to the said *Michael* in his life-time, and to the same *Margery* after his death, hath altogether refused, and to transfer it to the same *Margery* doth yet refuse: And whereas also, &c.

Woosely and Fowler.

(a) Not in the original.
Quantum meruit for shipwright's work.

(b) The original is as here.

Table to the Reports 19.

AND whereas also the said *John* afterwards, to wit, the same day and year abovesaid at *London* aforesaid [(a) in the parish and ward aforesaid] in consideration that the said *George* at the like instance and request of the said *John* had done and performed for the said *John* divers other shipwright's work, and at the like special instance and request of the said *John* had found and provided for the same *John* divers other materials and things necessary used in and about the work last mentioned, (b) [he the said *John* in consideration thereof afterwards, to wit, the same day and year abovesaid, at *London* aforesaid], (a) assumed upon himself, and to the same *George* then and there faithfully promised, that he the said *John* all such sums of money, as he the same *George* for the work, materials and things necessary aforesaid last mentioned reasonably deserved to have, to the same *George*, when he should be thereto afterwards required, would well and faithfully pay and content: And the same *George* in fact says, that he the same *George* reasonably deserved to have of the said *John* other 650*l.* of like like lawful money, for the work, materials and things necessary aforesaid last mentioned, whereof the same *John* afterwards, to wit, the day and year abovesaid at *London* aforesaid (a) had notice: Nevertheless the said, &c.

Eeles and Stiles.

Assumpsit by an assignee against the master on a promissory note drawn by and in the name of the servant for value received for his master. The note before payment indorsed to the plaintiff.

London, to wit. *Thomas Eeles* complains of *Thomas Stiles* in the custody of the marshal, &c. for this, to wit, that whereas after the first day of *May* in the year of the Lord 1705, to wit, on the 17th day of *March* in the year of the Lord 1708, and long before, at *London* aforesaid in the parish of *St. Mary-le-bow* in the ward of *Cheape*, one *Randal Robertson* was servant of the said *Thomas Stiles*, and by the said *Thomas Stiles* then and long before usually intrusted to sign promissory notes for the said *Thomas Stiles* his master, to wit, at the parish and ward aforesaid; and the said *Randal* so as aforesaid being intrusted, the said *Randal* the same 17th day of *March* in the year of the Lord 1708, at *London* aforesaid in the parish and ward aforesaid, for the said *Thomas Stiles* made a certain note in writing

ing called a promissory note, bearing date the same day and year last mentioned, with the proper hand and name of the said *Randal* to the same note subscribed, and by the same note the said *Randal* promised to pay to one *James Ford*, or order, six months after the date of the same note, 80*l.* value received for the said *Thomas Stiles* the master of the said *Randal*: And the said *Thomas Eeles* farther says, that afterwards and before the payment and satisfaction of the said sum of 80*l.* in the same note contained, to wit, the 25th day of *March* in the year of the Lord 1709, at *London* aforesaid in the parish and ward aforesaid, the said *James* by indorsement, with his proper hand on the same note indorsed, appointed the contents of the same note to be paid to the said *Thomas Eeles* for value received; of which said note so indorsed, and of the said indorsement, the said *Thomas Stiles* afterwards, to wit, the same 25th day of *March* in the year of the Lord last aforesaid, at *London* aforesaid in the parish and ward aforesaid, had notice: And by virtue of the same note and indorsement aforesaid, as also by force of the statute in such case lately made and provided, the said *Thomas Stiles* then and there became chargeable and charged, and was and is chargeable to pay to the same *Thomas Eeles* the said 80*l.* in the same note mentioned, according to the tenor of the same note; and being so therewith chargeable and charged, the said *Thomas Stiles* in consideration thereof afterwards, to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *Thomas Eeles* then and there faithfully promised, that he the said *Thomas Stiles* the said 80*l.* to the said *Thomas Eeles*, according to the tenor of the note aforesaid, well and faithfully would pay and content: And whereas also the said *Thomas Stiles* afterwards, to wit, the 29th day of *September* in the 8th year of the reign of the now queen, at *London* aforesaid in the parish and ward aforesaid, was indebted to the said *T. Eeles* in another 80*l.* of lawful money of this kingdom, for so much money by the said *T. Eeles* for the said *Thomas*, and at the special instance and request of the said *Thomas* before then expended, laid out and paid; and the said *Thomas Stiles* being so therein indebted, the said *Thomas* in consideration thereof afterwards, to wit, the same 29th day of *September* in the 8th year aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *Thomas Eeles* then and there faithfully promised, that he the said *Thomas Stiles* the said 80*l.* last mentioned to the same *Thomas Eeles*, when he should be thereto afterwards required, would well and faithfully pay and content. Nevertheless the said, &c.

Notice:
3 & 4 Anne,
c. 9.

Assumpsit for
money laid out
and paid,

[44]

Morton and Sleddall.

Case by the assignee against the drawer of an inland bill of exchange.
Pract. Reg. 233.

The bill indorsed to the plaintiff according to the use of merchants.

Acceptance refused.

Notice to the drawer.

Indebted for money received to the plaintiff's use.

Midd', to wit. *John Morton* complains of *John Sleddall* in the custody of the marshal, &c. for this, to wit, that whereas the said *John Sleddall* on the 13th day of *April* in the year of the Lord 1717, at *Westminster* in the county aforesaid, (then being a person using commerce, to wit, at *Westminster* aforesaid), according to the use and custom of merchants, made his certain bill of exchange in writing, with his hand subscribed, bearing date the same day and year, and the same bill of exchange to one *Kingsmill Eyre* directed; by which said bill of exchange the same *John Sleddall* required the said *Kingsmill Eyre* to pay to one *Thomas Pipon*, or his order, the sum of 20*l.* twenty days after sight of the said bill, value received, and place it to the account of the subsistence for the use of the company of invalids of captain *Spicer* in the garrison at *Jersey*, and it should be allowed in account by the said *John Sleddall*: And the said *Thomas Pipon* afterwards, to wit, 14 *May* in the year of the Lord above said, at *Westminster* aforesaid, by his indorsement on that bill of exchange made according to the use and custom of merchants, order'd the contents of the said bill, to wit, the said 20*l.* to be paid to one *John Vowler*, or his order; which said *John Vowler* afterwards, to wit, 27th day of *May* in the year above said, at *Westminster* aforesaid, by his indorsement on that bill of exchange made according to the use and custom of merchants, ordered the contents of the same bill, to wit, the said 20*l.* to be paid to the said *John Morton*, or his order: And the same *John Morton* in fact says, that he afterwards, to wit, the first day of *June* in the year above said, at *Westminster* aforesaid, shewed to the said *Kingsmill Eyre* the bill aforesaid, with the indorsements aforesaid thereon made, and then and there required him to accept the said bill; which said *Kingsmill Eyre* would not accept the said bill, but to accept it, or the said 20*l.* in the same bill mentioned ever to pay, then and there totally refused; of which premises the said *John Sleddall* afterwards, to wit, the 8th day of *June* in the year above said, at *Westminster* aforesaid, had notice; by reason of which said premises he the said *John Sleddall*, according to the custom of merchants, became chargeable to pay to the said *John Morton* the said 20*l.* in the bill of exchange aforesaid mentioned: And the said *John Sleddall* so being chargeable afterwards, to wit, the same day and year, at *Westminster* aforesaid, in consideration thereof, assumed upon himself, and to the same *John Morton* then and there faithfully promised, that he the said *John Sleddall* the same 20*l.* to the same *John Morton* would well and faithfully pay and content: And whereas also the said *John Sleddall* the 30th day of *August* in the year above said was indebted to the said *John Morton* in 80*l.* for money by the said *John Sleddall* to the use of the said *John Morton* before received; and being so indebted

indebted the said *John Sleddall* the day and year last abovesaid, at *Westminster* abovesaid, in consideration thereof, assumed upon himself, and to the same *John Morton* then and there faithfully promised, that he the said *John Sleddall* the said 80*l.* to the same *John Morton* would well and faithfully pay and content: Nevertheless the said *John Sleddall* his several promises and assumptions abovesaid not regarding, but contriving and fraudulently intending the same *John Morton* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *John Morton* (altho' to do it the said *John Sleddall* by the same *John Morton* afterwards, to wit, the 31st day of *August* in the year abovesaid, and often after, at *Westminster* abovesaid was required) hath not paid, but the same to him hitherto to pay hath altogether refused, and yet doth refuse, to the damage of the said *John Morton* 80*l.* And therefore he produces the suit, &c.

Breach of promise.

Adams and Furgeon.

London, to wit. *John Furgeon* late of *Westminster* in the county of *Middlesex*, merchant, was attached to answer to *John Adams* in a plea of trespass on the case, &c. And whereon the said *John Adams* by *L. C.* his attorney complains, why whereas the said *John Furgeon*, together with *Daniel Barbald* late of *Greenwich* in the county of *Kent*, felt-maker, partner with the said *John Furgeon*, which said *Daniel* in the court of the lord and lady the king and queen before the king and queen themselves is duly outlawed, on the first day of *August* in the year of the Lord one thousand six hundred eighty-eight, at *London*, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, was indebted to the said *John Adams* in 140*l.* 8*s.* 8*d.* of lawful money of *England*, for divers wares and merchandizes of the said *John*, by the said *John Adams* to the same *John Furgeon* and the before named *Daniel*, who, &c. before that time sold and delivered; and being so therein indebted the said *John Furgeon* and the before named *Daniel*, who, &c. then and there in consideration thereof assumed upon themselves, and to the same *John Adams* then and there faithfully promised, that they the same *John Furgeon* and the before named *Daniel*, who, &c. the said 140*l.* 8*s.* 8*d.* to the said *John Adams*, when they should be thereto after required, would well and faithfully pay and content: Nevertheless the said *John Furgeon* and *Daniel*, who, &c. before the outlawry abovesaid had, contriving and fraudulently intending the same *John Adams* of the said 140*l.* 8*s.* 8*d.* craftily and subtilly to deceive and defraud, the said 140*l.* 8*s.* 8*d.* to the said *John Adams* (altho' to do it the said *John Furgeon* and *Daniel*, who, &c. before the outlawry abovesaid had, afterwards, to wit, the first day of *August* in the year of the Lord 1688 abovesaid, and the said *John Furgeon* often after, at *London* in the parish and ward abovesaid, by the said

Assumpsit against one partner, the other being outlawed.
Pract. Reg.
55. 157.

[45]
For goods sold.

Breach of promise.

said *John Adams* were required) have not, nor hath either of them yet paid, neither have they, nor either of them, any way contented him for the same, but the said 140*l.* 8*s.* 8*d.* to the said *John Adams* hitherto to pay, or for the same to content, have altogether refused; and the said *John Furgeon* to pay him the same doth yet refuse, to the damage of the said *John Adams* 140*l.* And therefore, he produces the suit, &c. Plaintiff recovered in this action.

Wanley against Lord, widow, and others.

Assumpsit by assignees of a promissory note against executors.
Plow. 180, 183.

3 & 4 Anne,
§ 9.

Midd, to wit. *George Wanley* and *George Cradock* complain of *Rachael Lord*, widow, *Thomas Lord*, gent. *Joseph Ludlow* and *Mary Thomas*, widow, executors of the last will and testament of *Robert Lord* deceased, in the custody of the marshal, &c. for this, to wit, that whereas the said *Robert* in his life-time after the first day of *May* in the year of the Lord 1705, to wit, the 28th day of *May* in the year of the Lord 1718, at *Westminster* in the county of *Middlesex*, made his certain note in writing called a promissory not, with his proper hand subscribed, bearing date the same day and year, and by the same note promised to pay to one *Mr. Edward Minshull*, or order, 500*l.* six months after the date of the same note for value received: And that sum of money being not paid to the said *Edward*, the same *Edward* afterwards, to wit, the 30th day of *June* in the year of the Lord 1718 abovesaid, at *Westminster* abovesaid, indorsed that note with his own proper hand thereto subscribed, and by that indorsement the same *Edward* appointed the same sum of money to be paid to the said *George Wanley* and *George Cradock*, whereof the said *Robert* in his life-time had notice; and by reason thereof, and by force of the statute in such case lately made and provided, the same *Robert* in his life-time became liable to pay to the same *George Wanley* and *George Cradock* the same sum of money, according to the tenor of the same note; and in consideration of the premises the same *Robert* in his life-time assumed upon himself, and to the same *George Wanley* and *George Cradock* then and there faithfully promised, to pay them that sum of money: Nevertheless the said, &c.

White against Howell and his wife.

Declaration and pleadings in a feigned issue directed out of chancery concerning partnership.

London, to wit. *Robert White* complains of *Richard Howell* and *Grace* his wife administratrix of the goods and chattels, rights and credits of *William Lawrence* deceased, who died intestate in the custody of the marshal, &c. for this, to wit, that whereas on the 11th day of *June* in the 12th year of the reign of the lord the now king of *England*, &c. at *London*, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, a certain discourse was had and moved between

the said *Robert* and the said *Richard* and *Grace* of and concerning a certain former partnership in the mercers trade jointly had and negotiated between the said *Robert* and one *Matthew Williams* and the said *William Lawrence* in his life-time, to wit, in the year of the Lord 1682 and afterwards, upon which said discourse the said *Robert* asserted and affirmed, that he the said *Robert* had paid larger and more sums of money, by reason of the said former partnership, than he on that account had before received; and thereupon the said *Richard* and *Grace*, in consideration of 5*s.* of lawful money of *England* to them in hand by the said *Robert* paid, assumed upon themselves, and to the same *Robert* then and there faithfully promised, that they the same *Richard* and *Grace* would pay to the said *Robert* five shillings of like lawful money of *England* for every pound or sum of twenty shillings which he the said *Robert* had paid, by reason of such former partnership, beyond or more than he on that account had before received, and so according to that rate for every greater or less sum than the sum of 20*s.* And the said *Robert* in fact says, that he had paid 500*l.* and more beyond what he had received by that means, or on account of the former partnership, to wit, at *London* aforesaid in the parish and ward aforesaid, whereby 125*l.* to the said *Robert* from the said *Richard* and *Grace* became due and payable: And whereas also afterwards, to wit, the same day, year and place aforesaid, a certain other discourse was moved and had between the said *Robert* and the said *Richard* and *Grace* concerning a certain debt of 211*l.* 18*s.* from the said intestate *William Lawrence* at the time of his death to the said *Robert* due and unpaid by reason of the said former partnership; upon which said discourse the said *Richard* and *Grace* affirmed, that the said *Williams* at the time of his death was not indebted to the said *Robert* in any sum of money whatever by reason of the first partnership: And thereupon the said *Richard* and *Grace*, in consideration of the sum of 5*s.* of lawful money of *England* to them by the said *Robert* in hand paid, assumed upon themselves, and to the same *Robert* then and there faithfully promised, that they other 5*s.* for every pound or 20*s.* and so after that rate for every greater or less sum, that from the said *William Lawrence* at the time of his death to the said *Robert* was due by reason of such first partnership, to the said *Robert*, when they should be thereto after required, would well and faithfully pay and content: And the said *Robert* in fact saith, that the sum of 211*l.* 18*s.* or some other sum of money, from the said *William Lawrence* at the time of his death to the said *Robert* was due and unpaid, to wit, at *London* aforesaid in the parish and ward aforesaid: Nevertheless the said *Richard* and *Grace* their several promises and assumptions aforesaid in form aforesaid respectively made not regarding, but contriving and fraudulently intending the said *Robert* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *Robert* have not,

[46]

nor

nor hath either of them paid, altho' to do it the said *Richard* and *Grace* afterwards, to wit, the 10th day of *October* in the 12th year abovesaid; and often after, at *London* abovesaid in the parish and ward abovesaid were required; but to pay him the same have hitherto refused; and yet do refuse, to the damage of the said *Robert* 40*l.* And therefore he produces the suit, &c.

As to the first, the plaintiff paid not more money in the partnership than he received.

And the said *Richard* and *Grace*, by *S. P.* their attorney, come and defend the force and injury, when, &c. and say, that the said *Robert* ought not to have or maintain his action abovesaid thereof against them, because they say, that right and true it is that they did assume upon themselves in manner and form as the said *Robert* above against them hath declared; but the said *Richard* and *Grace*; as to the first promise and assumption in the declaration abovesaid above specified, for plea say, that the said *Robert* hath not paid larger and more sums of money by reason of the said former partnership, than he on that account had before received: And of this they put themselves on the country:

As to the second, that the intestate was not indebted to plaintiff on the partnership account. Pract. Reg. 155. *Venire* awarded to try both issues.

And the said *Robert* likewise, &c. And as to the second promise and assumption in the declaration abovesaid above specified, they for plea say, that the said *William* at the time of his death was not indebted to the same *Robert* in any sum of money whatever by reason of the said first partnership: And of this they put themselves on the country: And the said *Robert* thereof likewise, &c. Therefore to try as well that issue as the said other issue between the parties abovesaid above joined, let a jury thereon come before the lord the king at *Westminster* on *Tuesday* next after five weeks of *Easter*; and who neither, &c. to recognize, &c. Because as well, &c. The same day is given to the parties abovesaid there, &c.

Palgrave, Bart. and Windham, Esq;

Trin. 4. Rot. 557.

Case on the Stat. 8 Ann. c. 17. for the better security of rents and preventing frauds by tenants.

Norfolk, to wit. *FRANCIS Windham* late of *Cromer* in the county abovesaid, esq; was attached to answer to *Richard Palgrave*, bart. administrator of the goods and chattels which belonged to the lady *Anne Palgrave* his late mother deceased, who died intestate, &c. in a plea of trespass on the case, &c. And whereon the same *Richard* by *Thomas Hare* his attorney complains, why whereas in a statute made in the parliament of lady *Anne* late queen of *Great Britain*, &c. held at *Westminster* in the county of *Middlesex* on the 8th day of *July* in the 8th year of the reign of the said late queen, it was among other things enacted by the authority of the same parliament, that from and after the first day of *May*, which should be in the year of our Lord 1710, no goods or chattels whatsoever lying or being in or upon any messuage, lands or tenements, which were or should be leased for life or lives, term of years, at will or otherwise, should be liable to be taken by virtue of any execution on any

[47]

The act set forth. No goods to be taken in execution unless the plaintiff before

any pretence whatsoever, unless the party, at whose suit the said execution was sued out, should before the removal of such goods from off the said premises by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as were or should be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution, provided the said arrears of rent did not amount to more than one year's rent: And in case the said arrears should exceed one year's rent, then the said party, at whose suit such execution was sued out, paying the said landlord or his bailiff one year's rent, might proceed to execute his judgment as he might have done before the making of that act; and the sheriff or other officer was thereby impowered and required to levy and pay to the plaintiff, as well the money so paid for rent as the execution money, as by the statute in that case made and provided among other things more fully is manifest and appears: And whereas the said lady *Anne Palgrave* after the making the said act, to wit, on the 16th day of *June 1712*, had demised and to farm let out unto one *David Cook* two messuages and 120 acres of land, with the appurtenances, situate, lying and being in *Norwood Barningham Town, Barmingham and Bodham*, in the said county of *Norfolk*; to hold and occupy to the same *David* and his assigns, from the feast of *St. Michael* the Arch-angel then last past until the end and term of one whole year from thence next following, and fully to be compleat and ended, and so from year to year, as long as both parties shall please; yielding therefore yearly, as long as the said *David* the said two messuages and 120 acres of land with the appurtenances should occupy, to the said lady *Anne Palgrave*, her heirs and assigns, the rent or sum of 70*l.* of lawful money of *Great Britain*, at the feast of the annunciation of the blessed virgin *Mary* and *St. Michael* the Arch-angel by equal portions to be paid: By virtue of which demise the said *David* into the said two messuages and 120 acres of land with the appurtenances entered and was thereof possessed, and the same occupied for the space of two years, and 70*l.* of the rent aforesaid, at the feast of *St. Michael* the arch-angel in the year of the Lord 1713 for one whole year then ended, to the same lady *Anne Palgrave* were due and in arrear and unpaid: And whereas the said *Francis* afterwards, to wit, the sixth day of *October* in the 12th year of the reign of the said lady *Anne* late queen of *Great Britain*, &c. at *Norwood Barningham* aforesaid, (he the said *Francis* then and yet being chief bailiff of the liberty of the dutchy of *Lancaster* in the county aforesaid) by virtue and pretence of a certain writ of *Fieri facias* of the goods and chattels of the said *David*, at the suit of one *Erasmus Buck*, sued out of the court of the said late lady the queen of the bench (the same court at *Westminster* in the county of *Midlesex* then being, against the said *David Cooke* upon a judgment against him in the said court of the bench aforesaid then before had and obtained, and to the then sheriff of the county of *Nor-*

folk

he remove such goods pay the landlord a year's rent.

Lease at will.

70*l.* Rent

A year's rent due.

The defendant as high bailiff of the dutchy of *Lancaster*, by virtue of a warrantona *Fi fac.*, took the tenant's goods on the premises to the value of 200*l.*

Notice of the
rent arrear.

Preach of the
statute.

[48]
Administration
granted to the
plaintiff.
Pract. Reg. 37,
43.

Folk directed; and by virtue of a warrant of the same sheriff in writing under his seal sealed, to the said *Francis Windham* directed, he the said *Francis* afterwards, to wit, the said 6th day of *October* in the year above said, at *Norwood Barningham* above said and within the liberty above said (the same *Francis* then being bailiff) took the goods and chattels of the said *David Cook* in and upon the messuages and lands above said, with the appurtenances, being to the value of 200*l*. And the same *Richard* farther says, that after the taking, and before the removal of the said goods and chattels by pretence of the warrant above said, to wit, the same day, year and place last above said, at *Norwood Barningham* above said, she the said lady *Anne Palgrave* in her life-time gave the same *Francis* notice of the rent above said so as above said to her due; and then and there the same lady *Anne* demanded of the said *Francis* the rent above said, according to the form of the statute above said, out of those goods and chattels, which he the same *Francis* then and there refused to pay: And so the same *Francis* the statute above said not valuing, nor the penalty in the same contained any ways fearing, but contriving and fraudulently intending the same *Anne* in her life-time, and the said *Richard* after the death of the said *Anne*, in this behalf craftily and subtilly to deceive and defraud, the said 70*l*. for the rent above said for one whole year, ended at the feast of *St. Michael* the arch-angel in the year of the Lord 1713 above said, being in arrear and to the same *Anne* unpaid as above said, (although often required) hath not paid nor any way contented, but the goods and chattels above said, by pretence of the warrant above said taken, the same *Francis* afterwards, to wit, the sixth day of *October* in the twelfth year of the late queen above said, took, carried away and removed off and from the tenements above said, against the form of the statute in that case made and provided, the said 70*l*. for the rent above said so as above said due, or any part thereof, then not being paid: And the same *Richard* farther says, that the said *Francis* the said rent to the same *Anne* in her life-time, or to the said *Richard* after the death of the said *Anne*, (to which said *Richard* the administration of all and singular the goods and chattels which belonged to the said *Anne* at the time of her death, to wit, on the 11th day of the month of *June* in the year of the Lord 1716, at *Norwood Barningham* above said after the death of the said *Anne*, by *Thomas Tanner* professor of divinity, principal official of *Charles* lord bishop of *Norwich* lawfully constituted, in due form of law was committed) hath not paid, nor any way contented, but them to the same *Anne* in her life-time, and to the same *Richard* after the death of the said *Anne*, to pay or any way to content hath altogether refused and yet doth refuse, to the damage of the said *Richard* 100*l*. And therefore he produces the suit, &c. And he produces here in court the letters of administration above said, which the commission of administration above said to the same *Richard* in form above said testify, &c.

Not guilty pleaded, and on trial a verdict for the plaintiff and 72*l*. damages.

Whyte and Baynton.

London, to wit. **T** *Thomas Baynton* late of *London*, merchant, and *Robert Shaw* late of *London*, merchant, were attached to answer to *Samuel Whyte* in a plea of trespass on the case, &c. And whereon the same *Samuel* by *A. B.* his attorney complains, that whereas on the ninth day of *January* in the year of the Lord 1717, and before and afterwards, the said *Thomas* and *Robert* were partners in the way of merchandizing, jointly negotiating and using commerce together as partners, to wit, at *London* in the parish of *St. Mary-le-bow* in the ward of *Cheape*, and they being so therein partners as aforesaid, the said *Thomas*, after the first day of *May* in the year of the Lord 1705, to wit, the 9th day of *January* in the year of the Lord 1717, at *London* aforesaid in the parish and ward aforesaid, according to the use of merchants, made a certain note in writing bearing date the same day and year, with his proper hand subscribed, and thereby for himself and the said *Robert Shaw* promised to pay to the said *Samuel* 200*l.* one month after the date of the same note for value received of *Mr. David Whyte*; by reason whereof, and by force of the statute in such case made and provided, the said *Thomas* and *Robert* became chargeable to pay to the said *Samuel Whyte* the said 200*l.* and being so chargeable the said *Thomas* and *Robert* the said 9th day of *January* in the year above said, at *London* aforesaid in the parish and ward aforesaid, in consideration thereof assumed upon themselves, and to the same *Samuel Whyte* then and there faithfully promised, that they the said *Thomas* and *Robert* the same 200*l.* to the said *Samuel Whyte*, according to the tenor of the said note, would well and faithfully pay and content: And whereas also the said *Thomas* and *Robert* so being partners as aforesaid, after the said first day of *May* in the year of the Lord 1705 above said, to wit, the said 9th day of *January* in the year of the Lord 1717 above said, at *London* aforesaid in the parish and ward aforesaid, according to the use of merchants, made their certain note in writing bearing date the same day and year, and thereby promised to pay to the said *Samuel Whyte* another 200*l.* one month after the date of the same note for value received of *Mr. David Whyte*; by reason whereof, and by force of the statute in such case made and provided, the said *Thomas* and *Robert* became chargeable to pay to the said *Samuel Whyte* the said 200*l.* last mentioned; and being so chargeable the said *Thomas* and *Robert*, the said 9th day of *January* in the year of the Lord 1717 above said, at *London* aforesaid in the parish and ward aforesaid, in consideration thereof assumed upon themselves, and to the same *Samuel* then and there faithfully promised, that they the said *Thomas* and *Robert* the same 200*l.* to the same *Samuel*, according to the tenor of the said note, would well and faithfully pay and content: Nevertheless the said, &c.

Assumpsit against two partners on a note given by one for himself and the other.

3 & 4 Anne, c. 9.

Laid another way.

The Mayor of the city of Coventry against Palmer and another.

Case against the mayor of Coventry for the ensigns of mayoralty.

Plaintiff elected mayor.

[49]

And required the defendants to deliver the same.

Which they refused.

Midd^s, to wit. *John Bennet*, gent. mayor of the city of *Coventry*, complains of *Thomas Palmer* late mayor of the city of *Coventry* aforesaid, and *Edward Owen* pretended mayor of the said city, in the custody of the marshal, &c. for this, to wit, that whereas the city of *Coventry* aforesaid is an ancient city, in which said city for many years now last past there was and now is a mayor of the same city: And whereas also the ensigns of mayoralty of the city aforesaid, to wit, the mace and sword, and also the seal of the corporation of the city aforesaid, and likewise the keys of the council-house of the city aforesaid, to the place and office of mayor of the city aforesaid do belong and appertain, and for divers years last past have belonged and appertained: And whereas also the said *John Bennet*, on the 13th day of *October* in the eighth year of the reign of the lord *William* the third, now king of *England*, &c. at the city of *Coventry* aforesaid in the county of the city of *Coventry* aforesaid, was duly elected into the place and office of mayor of the city of *Coventry* aforesaid; and the same *John Bennet*, on the first day of *November* in the 8th year above said, at the city aforesaid in the county of the city aforesaid, was duly admitted into the place and office aforesaid of mayor of the city aforesaid, for one whole year then next following; and by that means the said ensigns of mayoralty of the city aforesaid, to wit, the mace and sword of the city aforesaid, and also the seal of the corporation of the city aforesaid, and likewise the keys of the council-house of the city aforesaid, to the same *John Bennet* do belong and appertain, and in his custody ought to remain during the whole time of his mayoralty: And altho' the said *John Bennett* on the said first day of *November* in the 8th year above said, and often after, at the city of *Coventry* aforesaid in the county of the city of *Coventry* aforesaid, required the said *Thomas Palmer* and *Edward Owen* to deliver to him the said ensigns of mayoralty of the city aforesaid, to wit, the mace and sword of the city aforesaid, and also the seal of the corporation of the city aforesaid, and likewise the keys of the council-house of the city aforesaid: Nevertheless the said *Thomas Palmer* and *Edward Owen* the said ensigns of mayoralty of the city aforesaid, to wit, the mace and sword of the city aforesaid, and also the seal of the corporation of the city aforesaid, and likewise the keys of the council-house of the city aforesaid, to the said *John Bennett* to deliver have unduly and unjustly refused, and yet do refuse, to the great damage and grievance of the said *John Bennett*: And whereas also the said *John Bennett*, for the obtaining of the said ensigns of mayoralty of the city aforesaid, to wit, the mace and sword of the city aforesaid, and also the seal of the corporation of the city aforesaid, and likewise the keys of the council-house of the city aforesaid, afterwards, to wit, the 27th day of *November* in the 8th year of the reign of the said lord the now king above said, out of

of the court of the said lord the now king before the king himself, the same court then being at *Westminster* in the county of *Middlesex* afore said, did obtain and prosecute a certain writ of the said lord the now king of *Mandamus*, to the said *Thomas Palmer* late mayor of the city afore said, and to *Edward Owen* the pretended mayor of the city afore said, directed; by which said writ the said lord the king reciting, that whereas in the custody of the said *Thomas Palmer* and *Edward Owen*, or one of them, then remained the ensigns of mayoralty of the city afore said, to wit, the mace and sword of the city afore said, and also the seal of the corporation of the city afore said, and likewise the keys of the council-house of the city afore said, to the place and office of mayor of the city afore said belonging and appertaining; and whereas also the said *John Bennett* was duly elected to the place and office of mayor of the city afore said on the said 13th day of *October* then last past, and was admitted into the place and office of mayor of the city afore said on the said first day of *N.* then next following for one whole year then next following, to whom the ensigns of the mayoralty of the city afore said, to wit, the mace and sword of the city afore said, and also the seal of the corporation of the city afore said, and likewise the keys of the council-house of the city afore said, do belong and appertain, and in his custody ought to remain during the whole time of his mayoralty; and altho' the said *John Bennett*, now mayor, often required the said *Thomas Palmer* and *Edward Owen* to deliver to him the ensigns of mayoralty of the city afore said, to wit, the mace and sword of the city afore said, and also the seal of the corporation of the city afore said, and likewise the keys of the council-house of the city afore said: Nevertheless the said *Thomas Palmer* and *Edward Owen* the ensigns of mayoralty of this city afore said, to wit, the mace and sword of the city afore said, and also the seal of the corporation of the city afore said, and likewise the keys of the council-house of the city afore said, to the said *John Bennett* to deliver unduly and unjustly had refused, and then did refuse, in contempt of the said lord the now king, and to the great damage and grievance of the said *John Bennett*, as on the complaint of the said *John Bennett* the same lord the now king had heard: Therefore the said lord the now king, being willing that due and speedy justice should be done to the said *John Bennett* in that behalf as was right, by the said writ commanded the said *Thomas Palmer* and *Edward Owen*, firmly injoining that they should immediately after the receipt of the said writ of the said lord the king deliver, or cause to be delivered the ensigns of the mayoralty afore said, to wit, the mace and sword afore said, and the seal of the corporation of the city afore said, and also the keys of the council-house of the city afore said, to the said *John Bennett*, or cause to the said lord the now king should signify to the contrary, lest in default of the said *Thomas Palmer* and *Edward Owen* complaint to the said lord the king should come repeated; and how that writ of the said lord the king should be ex-

Mandamus sued out.

[50]

False return that
the plaintiff was
not elected, but
one of the de-
fendants.

Averment.

executed, to the said lord the king should make appear at *Westminster* aforesaid on *Saturday* next after the octave of *St. Hillary*, the said writ of the said lord the king to the same lord the king then remitting; which said writ afterwards, and before the return of the same, to wit, on the first day of *December* in the 8th year of the reign of the said lord the now king aforesaid, to the said *Thomas Palmer* and *Edward Owen* was delivered in form of law to be executed, to wit, at *Westminster* aforesaid in the county aforesaid: Nevertheless the said *Thomas Palmer* and *Edward Owen* the said ensigns of mayoralty of the city aforesaid, to wit, the mace, &c. or any of them, to the said *John Bennett* have not delivered, or caused to be delivered, according to the command of the writ aforesaid, but the same *Thomas Palmer* and *Edward Owen* the premisses well knowing, and farther contriving and falsely and maliciously intending the said *John Bennett* in this behalf to aggrieve, and of the custody and use of the said ensigns of mayoralty of the city aforesaid, to wit, the mace, &c. for the whole time of his mayoralty there to deprive, at the return of the writ aforesaid, to wit, on the said *Saturday* next after the octave of *St. Hillary* in the 8th year of the reign of the said lord the now king aforesaid, falsely and maliciously returned to the said lord the now king in the court of the said lord the king before the king himself, the same court at *Westminster* aforesaid in the said county of *Middlesex* then being, their answer to the said writ in a certain schedule to the said writ annexed; by which said answer so returned, the said *Thomas Palmer* and *Edward Owen* to the said lord the now king certified, that the said *John Bennett* was not elected into the office or place of mayor of the city of *Coventry* aforesaid, as by the writ aforesaid was supposed: And farther that the said *Edward Owen* on the said 13th day of *October* then last past into the place and office of mayor of the city aforesaid was duly chose, and that he on the said first day of *November* into the office aforesaid was duly admitted for one whole year from thence next following; and that by reason thereof the said *Edward Owen*, then being mayor of the city aforesaid, the ensigns of mayoralty of the said city, and the seal of the corporation of the said city, and the keys of the council-house, during the whole time of the said mayoralty of the said *Edward Owen*, which then was not past, ought to keep, and that therefore the same to the said *John Bennett* they had not delivered, nor ought to deliver, as by the writ aforesaid, and the return thereof, in the said court of the said lord the now king before the king himself at *Westminster* aforesaid on record filed and remaining, more fully appears; when in truth and in fact the said *John Bennett* was duly elected and admitted into the office and place of mayor of the city of *Coventry* aforesaid, as by the said writ was supposed, and when in truth and in fact the said *Edward Owen* was not duly elected or admitted into the place and office of mayor of the city aforesaid, as by the return aforesaid is above supposed: By pretence of which said false return so as aforesaid made, the said *John Bennett* not only of the custody and use of the

the said ensigns of mayoralty of the city aforesaid, to wit, the mace and sword, and also the seal of the corporation of the city aforesaid, and also the keys of the council-house of the city aforesaid, and of his remedy for the obtaining of the same, is deprived, but also large sums of money in the obtaining and prosecution of the said writ of *Mandamus* hath paid and laid out, and by that means is greatly prejudiced, to the damage of the said *John* 200*l.* And therefore he produces the suit, &c.

Booge against Edwards.

London, to wit, *S* *Ussanna Edwards* late of *London*, widow, executrix of the last will and testament of *John Edwards* her late husband deceased, was attached to answer to *Deborah Booge* widow, executrix of the last will and testament of *John Booge* her late husband deceased, in a plea of trespass on the case, &c. And whereon the said *Deborah* by *E. G.* her attorney complains, why whereas the said *John Booge* in his life-time, to wit, on the 20th day of *January* in the year of the Lord 1715 at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, at the special instance and request of the said *John Edwards* in his life-time, the work and labour of the said *John Booge* had given and bestowed in and about divers affairs of the said *John Edwards*, he the said *John Edwards* in his life-time in consideration thereof afterwards in the life-time of the said *John Booge*, to wit, the same day and year aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *John Booge* then and there faithfully promised, that he the said *John Edwards* all such sums of money, as the said *John Booge* for his work and labour in and about the affairs aforesaid, so as aforesaid given and bestowed, reasonably deserved to have, to the same *John Booge*, when he should be thereto after required, well and truly would pay and content: And the same *Deborah* in fact says, that the said *John Booge* in his life-time, to wit, the same day and year aforesaid, at *London* aforesaid in the parish and ward aforesaid, reasonably deserved to have 200*l.* of lawful money of *Great Britain*, for the work and labour aforesaid of him the said *John Booge* so as aforesaid given and bestowed, whereof the said *John Edwards* afterwards in his life-time, to wit, the same day and year aforesaid, at *London* aforesaid in the parish and ward aforesaid, had notice: Nevertheless the said *John Edwards* in his life-time, and the said *Sussanna* after the death of the said *John Edwards*, the several promises and assumptions of the said *John Edwards* so as aforesaid made not regarding, but contriving and fraudulently intending the same *John Booge* in his life-time, and the said *Deborah* after the death of the said *John Booge*, in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the said *John Booge* in his life-time, or to the said *Deborah* after the decease of the said *John Booge*, have not paid, nor hath either of them paid, or for the same have hi-

Assumpsit by an executrix against an executrix for work done.

Action on the case.

thereto contented, or hath either of them contented, (altho' to do it the said *John Edwards* in his life-time afterwards, and in the life-time of the said *John Booge*, to wit, the day and year afore-said, at *London* afore-said in the parish and ward afore-said, by the said *John Booge* was required, and altho' also to do it the said *John Edwards* in his life-time afterwards, after the death of the said *John Booge*, to wit, on the first day of *April* in the year of the Lord 1718, at *London* afore-said in the parish and ward afore-said, by the said *Deborah* was likewise requested, and altho' also to do it the said *Susanna* afterwards, after the death of the said *John Edwards* and *John Booge*, to wit, on the first day of *August* in the year of the Lord 1718, and often after, at *London* afore-said in the parish and ward afore-said, was required); whereby the said *Deborah* says she is prejudiced, and hath damage to the value of 200*l*. And therefore she produces the suit, &c. And the said *Deborah* produces here in court the letters testamentary of the said *John Booge* afore-said, whereby it sufficiently appears to the court here that the said *Deborah* is executrix of the said will of the said *John Booge*, and thereof hath the administration, &c.

West and West.

Case against the
eld mayor for
the charter-
books, ensigns
of mayoralty,
&c.

Midd, to wit. *Samuel West*, gent. mayor of the borough of *Banbury* in the county of *Oxford*, complains of *John West* late mayor of the borough afore-said, in the custody of the marshal, &c. for this, to wit, that whereas the borough of *Banbury* afore-said is an ancient borough, in which said borough for many years now last past there was and yet is a mayor of the said borough: And whereas also all charters, books, records, muniments and ensigns of magistracy of the borough afore-said, to the place and office of mayor of the borough afore-said do belong and appertain, and for divers years now last past have belonged and appertained: And whereas also the said *Samuel West* on the day of in the year of the reign of the lord *William* the third, now king of *England*, &c. at the borough of *Banbury* afore-said in the county of *Oxford* afore-said, was duly elected into the place and office of mayor of the borough afore-said, and the same *Samuel* afterwards at the borough of *Banbury* afore-said in the county of *Oxford* afore-said was admitted into the place and office afore-said of mayor of the borough afore-said for one whole year from thence next following, and for that reason the charters, books, records, muniments and ensigns of magistracy of the borough afore-said, to the same *Samuel West* do belong and appertain, and in his custody ought to remain during the whole time of his mayoralty afore-said: And altho' the said *Samuel West* on the said day of in the year above-said, at the borough of *Banbury* afore-said in the county of *Oxford* afore-said, required the said *John West* to deliver to the same *Samuel West* the said charters, books, records, muniments

muniments and ensigns of magistracy of the borough aforesaid; yet the said *John West* those charters, books, records, muniments and ensigns of magistracy, to the same *Samuel West* to deliver hath unduly and unjustly refused and still doth refuse, to the great damage and grievance of the said *Samuel West*: And whereas also the said *Samuel West* for the obtaining of the said charters, books, records, muniments and ensigns of magistracy of the borough aforesaid, afterwards, to wit, the 10th day of April in the 12th year of the reign of the lord the now king, out of the court of the said lord the now king before the king himself (the same court then being at *Westminster* aforesaid in the said county of *Middlesex*) obtained and prosecuted a certain writ of the said lord the now king of *Pluries mandamus* to the said *John West* directed, by which said writ the same king reciting, that whereas into the custody of the said *John West* then lately were delivered and then remained divers charters, books, records, muniments and ensigns of magistracy, to the borough of *Banbury* aforesaid in the said county of *Oxford* belonging and appertaining, which ought to be delivered to the said *Samuel West* for the use and benefit of the same borough, and that the said *Samuel*, then mayor of the borough aforesaid, had often required him the said *John West* to deliver to him the said *Samuel West* the said charters, books, records, muniments and ensigns of magistracy to the borough aforesaid belonging and appertaining, for the use and benefit of the said borough, and the said *John West* well knowing the premisses, but not regarding them, the said charters, books, records, muniments and ensigns of magistracy to the borough aforesaid belonging, and in his custody, in his possession unjustly detained, and the same charters, books, records, muniments and ensigns of magistracy, to the said *Samuel* to deliver unjustly refused, in contempt of the said lord the king, and to the great damage and grievance of the said *Samuel*, and to the manifest injury of his estate as by the complaint of the said *Samuel* the said lord the king had heard: The same lord the king, therefore, willing that due and speedy justice should be done to the said *Samuel* in that behalf as was right, commanded the said *John West* as he had before commanded him, by firmly injoining, that immediately after the receipt of the said writ all and singular the charters, books, records, muniments and ensigns of magistracy to the said borough belonging, and being in his custody, to the said *Samuel West* for the use and benefit of the same borough he should deliver or cause to be delivered, or cause to the said lord the king should signify to the contrary, lest in default of the said *John West* complaint to the said lord the king should come reiterated; and in what manner the same *John West* had executed the said precept of the said lord the king, should certify to the said lord the king at *Westminster* on day next after under the penalty of 80*l.* (the said writ of the said lord the king to the said lord the king then remitting); which said writ afterwards, and before the return thereof,

Pluries mandamus sued out.

[52]

Action on the case.

The return
thereof.

Ayerment.

to wit, the nineteenth day of *April* in the twelfth year of the reign of the said now lord the king abovesaid, to the said *John West* was delivered in form of law to be executed, to wit, at *Westminster* abovesaid in the county of *Middlesex* abovesaid: Nevertheless the said *John West* the said charters, books, records, muniments and ensigns of magistracy to the said borough belonging, to the said *Samuel* hath not delivered or caused to be delivered according to the command of the said writ; but the said *John West* the premisses well knowing, and farther contriving and falsely and maliciously intending the said *Samuel West* in this behalf to aggrieve, and of the custody and use of the said charters, books, records, muniments and ensigns of magistracy to the said borough belonging, for the whole time of his mayoralty there to deprive, at the return of the writ abovesaid, to wit, on *Friday* next after in the 12th year of the reign of the said lord the now king abovesaid, falsely and maliciously returned to the said lord the now king into the court of the said lord the now king before the king himself, the same court at *Westminster* in the said county of *Middlesex* then being, his answer to the said writ; by which said answer so returned the said *John West* to the said lord the now king certified, that divers records and ensigns of magistracy of the borough of *Banbury* abovesaid were delivered to the said *John West* as mayor of the said borough, and by reason thereof came to the hands of the said *John West*, and in his custody then remained by the same reason and not otherwise, for the use and benefit of the same borough, according to the custom of the said borough for time immemorial used; and that no charters, books, records or muniments in the writ abovesaid named, which by reason of the office of him the said *John West* to him the said *John West* ought to have been delivered, ever were in his custody: And the same *John West* farther certified, that the said *Samuel West* in the writ abovesaid named, at the time of the date or *teste* or issuing of the said writs, or either of them, was not, nor ever after was, nor then was, mayor of the borough of *Banbury* abovesaid; and for that reason the charters, books, records, muniments and ensigns of magistracy of the borough abovesaid, or any of them, to the same *Samuel West* he could not deliver nor ought to deliver, as by the writ abovesaid and return thereof, in the said court of the said lord the now king before the king himself, at *Westminster* abovesaid, on record filed and remaining, more fully appears; when in truth and in fact the said *Samuel West* was duly elected and admitted into the place and office of mayor of the borough of *Banbury* abovesaid in the county abovesaid, as by the writ abovesaid is above supposed, to wit, the day of in the year abovesaid, at *Banbury* abovesaid in the county abovesaid; and that he the said *Samuel*, at the time of the date or *teste* and issuing of the said first writ of *Mandamus* in the writ abovesaid mentioned, to wit, the day of in the year of the reign of the said lord the now king, and from thence

thence continually afterwards, was and now is mayor of the borough of *Banbury* aforesaid, to wit, at *Banbury* aforesaid in the said county of *Oxford* aforesaid, and by reason thereof all charters, books, records, muniments and ensigns of magistracy of the borough aforesaid, to him the said *Samuel* as mayor of the borough aforesaid ought to be delivered, and when in truth and in fact the said *John West*, at the said time of the date or *teste* issuing of the said first writ of *Mandamus* in the writ aforesaid mentioned, to wit, the said day of in the year of the reign of the said lord the now king aforesaid, nor at any time afterwards hitherto, was or is mayor of the borough of *Banbury* aforesaid; and when in truth and in fact the same *John West*, at the said time of the date or *teste* and issuing of the said first writ of *Mandamus* in the writ aforesaid mentioned, had and from thenceforth continually hitherto has in his hands divers charters, books, records and muniments to the said borough belonging in the said writ named: By pretence of which said false return, the said *Samuel West* not only of the custody and use of the said charters, books, records, muniments and ensigns of magistracy of the borough of *Banbury* aforesaid, and of his remedy for the obtaining of the same, is deprived, but also large sums of money in the obtaining and prosecution of the said writ of *Mandamus* hath expended and paid, and by that means is greatly prejudiced, to the damage of the said *Samuel West* 400*l*. And therefore he produces the suit, &c.

Warner against Riddall.

[53]

London, to wit, *Finch Riddall* late of *London*, gent, was attached to answer unto *Anne Warner* widow, executrix of the will of *Robert Warner* deceased, in a plea of trespass on the case: And whereon the same *Anne* by *A. B.* her attorney complains, why whereas the said *Robert* in his life-time, to wit, on the 10th day of *November* in the year of the Lord 1698, and always after, in his life-time used and exercised the art or mystery of a mariner; and one *Humphry Crawley*, then the apprentice of the said *Robert*, in that art or mystery for a long time before had educated, taught and instructed, and him the said *Humphry* in that art or mystery had made learned and expert: And whereas afterwards, to wit, 7th day of *August* 1702, the said *Finch* was master of a certain ship called then riding at anchor in the port of *London* aforesaid; which said ship was then ready, designed and appointed for a certain voyage under the command of the said *Finch* to be navigated, made and performed, from the port of *London* aforesaid to the *East Indies* in parts beyond the seas, there to be loaded, and after the loading of the said ship in the *East Indies* aforesaid, from the *East Indies* aforesaid unto the port of *London* aforesaid under the command of the said *Finch* to be navigated and return: The said *Finch* afterwards the same 7th day of *August*

Case against the master of a vessel by an executrix for wages due to her husband's apprentice on a voyage to the *East Indies*.

The agreement.

That he performed the voyage.

gust in the year of the Lord 1702 abovesaid, at *London* abovesaid in the parish of *St. Mary-le-bow* in the ward of *Cheape*, in consideration that the same *Robert* in his life-time, at the special instance and request of the said *Finch*, would permit the said *Humphry*, then being the apprentice of the said *Robert* in his life-time as abovesaid, to serve the said *Finch* in the ship abovesaid in the art or mystery abovesaid during his said voyage as abovesaid to be made and performed, assumed upon himself, and to the said *Robert* then and there faithfully promised, that he the same *Finch*, when he should be thereto required after that voyage made and performed, would pay to the said *Robert*, for the service of the said *Humphry* so as abovesaid to be performed, according to the rate of 55*s.* of lawful money of *England* for every month that he the said *Humphry* should serve as abovesaid; and altho' the same *Robert* in his life-time, giving credit to the faithful performance of the promise and assumption of the said *Finch* abovesaid, did permit the said *Humphry* to serve the said *Finch* in the said ship during the voyage abovesaid in form abovesaid to be made and performed; and altho' also the ship abovesaid, after the promise and assumption abovesaid in form abovesaid made, from the port of *London* abovesaid to the *East Indies* abovesaid did sail, and there afterwards on the first day of *April* 1704 was loaded, and after the loading thereof from the *East Indies* abovesaid to the port of *London* arrived, and there afterwards, to wit, on the first day of *December* 1705 the voyage abovesaid performed and finished; and altho' also the said *Humphry* during the same voyage, to wit, for the space of 23 months and 9 days served the said *Finch* in the said ship in form abovesaid, to wit, at *London* abovesaid in the parish and ward abovesaid, and 65*l.* 1*s.* 8*d.* of lawful money of *England* to the same *Robert* in his life-time for the service of the said *Humphry*, according to the rate abovesaid, during the said term that the said *Humphry* so as abovesaid served the said *Finch* in the voyage abovesaid, according to the said promise and assumption of the said *Finch* were due and payable: Nevertheless the said *Finch* (altho' he after the voyage abovesaid made and performed, to wit, on the 2d day of *December* in the year of the Lord 1705 abovesaid, at *London* abovesaid in the parish and ward abovesaid, by the said *Robert* in his life-time was required) the said 65*l.* 1*s.* 8*d.* or any penny thereof, to the same *Robert* in his life-time, or to the said *Anne* after the death of the said *Robert*, hath not paid: And whereas also the said *Finch* the said 2d day of *December* in the year of the Lord 1705 abovesaid, at *London* abovesaid in the parish and ward abovesaid, was indebted to the same *Robert* in his life-time in other 65*l.* 1*s.* 8*d.* of like money for work, labour and service by the said *Humphry*, as servant of the said *Robert* in his life-time for the said *Finch*, and at his special instance and request before that time done and performed; and being so therein indebted the said *Finch* afterwards, to wit, the said 2d day of *December* in the year of the Lord 1705 abovesaid, at *London* abovesaid

aforesaid in the parish and ward aforesaid, in consideration thereof assumed upon himself, and to the same *Robert* in his life-time then and there faithfully promised, that he the said *Finch* the said 65*l.* 1*s.* 8*d.* to the same *Robert*, when he should be thereto after required, would well and faithfully pay and content: And whereas also the said *Finch* the said 2d day of *December* in the year of the Lord 1705 above said, at *London* aforesaid in the parish and ward aforesaid, in consideration that the said *Humphry*, as servant of the said *Robert* in his life-time, had worked and laboured for and served the said *Finch* in the art or mystery of a mariner above said, assumed upon himself, and to the same *Robert* in his life-time faithfully promised, that he the said *Finch* so much money as the said *Humphry* for the work, labour and service aforesaid reasonably deserved to have, to the same *Robert*, when he should be thereto after required, would well and faithfully pay and content: And the same *Anne* in fact says, that the said *Humphry*, as servant of the said *Robert* in his life-time, for the work, labour and service last mentioned, deserved to have of the said *Finch* other 65*l.* 1*s.* 8*d.* of like money: Nevertheless the said *Finch* his several promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same *Robert* in his life-time, and the said *Anne* after the death of the said *Robert*, in this respect craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *Robert* in his life-time, or to the said *Anne* after the death of the said *Robert*, or to either of them, hath not paid, or for the same any way contented, (altho' to do it the said *Finch* by the said *Robert* in his life-time, and by the said *Anne* after the death of the said *Robert*, at *London* aforesaid in the parish and ward aforesaid, was required,) but to pay them the same, or for the same any way to content, hath altogether refused, and yet doth refuse, to the damage of the said *Anne* 100*l.* And therefore she produces the suit, &c. And the same *Anne* produces here in court the letters testamentary of the said *Robert*, whereby it sufficiently appears to the court here, that the said *Anne* is executrix of the will of the said *Robert*, and thereof hath the administration, &c.

[54]

Kirkman and Robinson.

London, to wit. *Ralph Robinson* late of *London*, merchant, was attached to answer *Simon Peter Kirkman* in a plea of trespass on the case, &c. And whereon the said *Simon Peter* by *T. W.* his attorney complains, why whereas the said *Ralph* on the first day of *January* in the second year of the reign of the lord *George* now king of *Great Britain*, &c. at *London* aforesaid in the parish of *St. Mary-le-bow* in the ward of *Cheape*, in consideration that the said *Simon Peter*, at the special instance and request of the said *Ralph*, had carried and transported for the said

Assumpsit by a master of a vessel for freight.

said *Ralph* divers goods, wares and merchandizes, in a certain ship or vessel called the *John and Catherine* from *Archangel* in parts beyond the seas to *London* aforesaid, assumed upon himself, and to the said *Simon Peter* then and there faithfully promised, that he the said *Ralph* all such sums of money, as he the same *Simon Peter* therefore reasonably deserved to have, to the same *Simon Peter*, when he should be thereto after required, would well and faithfully pay and content: And the same *Simon Peter* in fact says, that he therefore reasonably deserved to have of the same *Ralph* 250*l.* of lawful money of *Great Britain*, to wit, at *London* aforesaid in the parish and ward aforesaid, whereof the said *Ralph* then and there by the said *Simon Peter* had notice: Nevertheless the said *Ralph*, &c.

Shearman against Wright.

Assumpsit on a promissory note brought against the indorser.

Indorsement.

Notice to the drawer, who refused payment. *Pract. Reg.* 155.

[55]

Notice to the defendant.

London, to wit. *William Wright* late of *London*, farrier, was attached to answer *Thomas S.* in a plea of trespass on the case, &c. And whereon the said *Thomas* by *N. B.* his attorney complains, that whereas after the first day of *May* in the year of the Lord 1705, to wit, 23d day of *May* 1715, at *London* in the parish of *St. Mary-le-bow* in the ward of *Cheape*, one *E. S.* made his certain note in writing, called a promissory note, with the proper hand of the said *E. S.* subscribed, bearing date the same day and year last abovesaid, and the same note to the said *William Wright* delivered, by which said note the said *E. S.* promised to pay to the said *William Wright*, or order, the sum of 20*l.* three months after date, for value received; and afterwards, and within the said three months, to wit, 23d day of *July* in the year abovesaid, at *London* aforesaid in the parish and ward aforesaid, the said *William Wright*, by his indorsement with his own proper hand subscribed and made upon the same note, assigned that note to the said *Thomas S.* and by the said indorsement ordered the said *E. S.* to pay the contents of the same note to the said *Thomas S.* according to the tenor of the same note: And the said *Thomas* in fact says, that after the assignment and appointment aforesaid as aforesaid made, and after the expiration of the said three months in the same note mentioned, to wit, 23d day of *August* in the year last abovesaid, at *London* aforesaid in the parish and ward aforesaid, he the said *Thomas* shewed the bill aforesaid, and the indorsement aforesaid on the said bill, to the said *E. S.* and then and there required the same *Edward* to pay the contents of the said bill, to wit, the said sum of 20*l.* in the same specified, according to the tenor of the said bill, and the indorsement aforesaid, to the said *Thomas S.* but the same *E. S.* the same sum of money to the said *Thomas* did not pay, nor hath yet paid, but to pay the same sum of money to the said *Thomas* the said *Edward* then and there, to wit, the same day and year last abovesaid, and ever after, hitherto hath refused, whereof the said *Thomas* afterwards, to wit, 24th day of *August* in the year last

last abovesaid, at *London* aforesaid in the parish and ward aforesaid, gave notice to the said *William Wright*: And by reason of the premises, and also by force of the statute in such case made and provided, the said *William W.* became and was liable and is liable to pay to the same *Thomas* the said sum of 20*l.* in the same note mentioned; and so being liable the said *William Wright* in consideration thereof afterwards, to wit, the same 24th day of *August* in the year last abovesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *Thomas* then and there faithfully promised, that he the said *William* the said sum of 20*l.* to the same *Thomas*, when he should be thereto after required, would well and faithfully pay and content: And whereas also the said *William W.* afterwards, to wit, the same 24th day of *August* in the year last abovesaid, was indebted to the same *Thomas* in other 20*l.* of like money, for money by the said *W. W.* to the use of the said *Thomas* before that time had and received; and being so therein indebted the same *William* in consideration thereof afterwards, to wit, the same day and year last abovesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *Thomas* then and there faithfully promised, that he the same *William W.* the same last mentioned 20*l.* to the said *Thomas*, when he should be thereto afterwards required, would well and faithfully pay and content: Nevertheless the said *William, &c.*

3 & 4 Anne,
c. 9.

Count for 20*l.*
received by de-
fendant to plain-
tiff's use.

South'ton, to wit.

M. L. complains of *J. S.* in the custody of the marshal, &c. for this, to wit, that whereas the same *M.* was on the first day of *January* in the 26th year of the reign of *Charles* the second, now king of *England, &c.* unto the 20th day of *October* in the 27th year of the reign of the said lord the king, seised in his demean as of fee of certain water-mills, commonly called *S. Mills* otherwise *K. Mills*, and of a parcel of moor or meadow, containing by estimation three acres or thereabouts, near adjoining to the said mills, with the appurtenances, in *A.* in the county aforesaid; and the same *M. L.* and all they whose estate the same *M.* hath, in the mills and parcel of moor or meadow aforesaid have had and ought to have, and from time immemorial have been accustomed and ought to have, the benefit of a certain water or water-course which comes from a spring near, and increases a certain water-course or river which runs to other mills in *A.* aforesaid, and from thence to the mills aforesaid, called *S. Mills*, otherwise *K. Mills*, and the said *J. S.* well knowing the premises, but maliciously contriving and fraudulently intending him the said *M.* of the profit and commodity of his mills aforesaid and parcel of moor or meadow aforesaid altogether to deprive, on the 11th day of *September* in the 26th year of the reign of the lord the now king, at *A.* aforesaid, the bank or the inclosure of the water or water-course aforesaid, which comes from the spring aforesaid, and increases the water-course or river which runs from those mills in *A.* aforesaid

For diverting an
antient water-
course so that the
plaintiff lost the
benefit of his
mill.

to the said mills, called *S. Mills*, otherwise *K. Mills*, so much broke and threw down, or caused to be broke and thrown down, and the water aforesaid so much diverted or caused to be diverted, that by means of the said breaking, throwing down or diversion, the said mills, called *S. Mills*, otherwise *K. Mills*, for want of sufficient water running in the antient course, could not grind or work so well or commodiously, and the said parcel of moor or meadow aforesaid was greatly drowned and overflowed, whereby the said *M.* lost great part of the profits of the said mills and parcel of moor or meadow aforesaid for a long time, to wit, divers days and times between the said 11th day of *September* in the 27th year aforesaid, and the said 20th day of *October* aforesaid, whereby he says that he is prejudiced, and hath damage to the value of 100*l.* And therefore he produces the suit, &c.

Not guilty.

And the said *J. S.* by *J. L.* his attorney comes and defends the force and injury when, &c. and says that he is not guilty thereof: And of this he puts himself upon the country: And the said *M.* thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Friday* next after the morrow of the purification of the blessed *Mary*; and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Dunstar against Peirce.

Case on a foreign
bill of exchange
against the draw-
er.
Lutw. 946,
950.

Drawn on the
Gamboa com-
pany,

[56]

who refused to
accept it.

London, to wit. *William Dunstar* complains of *Edward Peirce*, being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, for this, to wit, that whereas the said *Edward Peirce* and one *John Treverse* now deceased, on the 9th day of *May* in the year of the Lord 1673, being merchants at *Sereleon* in parts beyond the seas, to wit, at *London* aforesaid in the parish of *St. Mary-le-bow* in the ward of *Cheape*, by their bill of exchange then and there with their own proper hands subscribed, and directed to the committee of the *Gamboa* company, required and appointed the said committee to pay to the said *William*, or his order, on sight of that bill, his second or third bill of the same time and date with the bill aforesaid not being paid, the sum of 65*l.* 4*s.* being for the like value there received: And whereas also afterwards, to wit, on the first day of *September* in the year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, the said bill of exchange was shewed to the said committee of the *Gamboa* company, and the same committee were then and there required to accept the said bill according to the use of merchants, and to make payment of the said 65*l.* 4*s.* to him the said *William*, according to the form and effect of that bill: And whereas also the committee aforesaid then and there refused to accept of the said bill and to pay the said 65*l.* 4*s.* the second and third bill, or either of them, being then and yet unaccepted and unpaid; by reason of which said premisses, according to the cus-

tom

from among merchants from time immemorial used and approved, to wit, at London aforesaid in the parish and ward aforesaid, the said Edward and John ought to have paid the said 65*l.* 4*s.* to him the said William; and the said Edward and John in consideration of the premises then and there assumed upon themselves, and to the said William then and there faithfully promised, to pay him the said William the said 65*l.* 4*s.* when they should be thereto after required: Nevertheless the said Edward and John in the life-time of the said John, and the said Edward after the death of the said John, have not paid the said 65*l.* 4*s.* to the same William, although often required, &c. but the said Edward and John in the life-time of the said John, and the said Edward after the death of the said John, have altogether refused to pay them to the said William, and the said Edward doth yet refuse to pay him them: And whereas the said Edward and John Treverse in the life-time of the said John, to wit, the said 9th day of May in the year 1673 aforesaid, at London aforesaid in the parish and ward aforesaid, were indebted to the said William in other 65*l.* 4*s.* of lawful money of England, for so much money by them the said Edward and John in the life-time of the said John, to the use of the said William before that time had and received; and the said Edward and John in consideration thereof then and there assumed upon themselves, and to the said William then and there faithfully promised, that they the same Edward and John the same 65*l.* 4*s.* to the said William, when they should be thereto afterwards required, would well and faithfully pay and content: Nevertheless the said Edward and John in the life-time of the said John not regarding their several promises and assumptions aforesaid in form aforesaid made, but contriving and fraudulently intending him the said William in this respect craftily and subtilly to deceive and defraud, the said Edward and John, or either of them, in the life-time of the said John, or the said Edward after the death of the said John, although often required, &c. have not, nor hath either of them, paid the said several sums of money, or any penny thereof, but the said Edward and John, and either of them, in the life-time of the said John, and the said Edward after the death of the said John, and either of them, have hitherto altogether refused to pay him them, and the said Edward doth yet altogether refuse to pay him them, to the damage of the said William 200*l.* And therefore he produces the suit, &c. With this, that the said William Dunstar will verify, that at the said time of making the bill aforesaid, and long before and after, there was at London aforesaid, to wit, in the parish and ward aforesaid, a certain company of merchants, called and known by the name of the committee of the *Gamboa* company, to which said company by that name bills of exchange for all that time were used to be directed and charged according to the use and practice among merchants, &c.

Breach

General indebtedness.

Averment.

And now at this day, to wit, *Wednesday* next after fifteen days of *Easter* this same term, until which day the said Edward Peirce had

Demurrer to the first count.

had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* comes as well the said *William Dunstar* by his attorney aforesaid; as the said *Edward Peirce* by *Dutton Seaman* his attorney: And the same *Edward* defends the force and injury when; &c. And as to the first promise and assumption in the declaration of the said *William* aforesaid abovementioned, he the same *Edward* prays judgment of the declaration aforesaid, because he says, that the declaration aforesaid and the matter in the same contained are not sufficient in law to maintain the action of him the said *William* thereof against him the said *Edward* had, to which said declaration, as to the said first promise and assumption in the declaration of the said *William* abovementioned, the same *Edward* hath no necessity nor is by the law of the land obliged any way to answer: And this he is ready to verify: Wherefore for want of a sufficient declaration in this respect, as to the said first promise and assumption in the declaration of him the said *William* abovementioned, he the same *Edward* prays judgment; and that the said *William* may be precluded from having his action thereof against him the said *Edward* as to the first promise and assumption in the declaration of him the said *William* abovementioned: And as to the second promise in the declaration of him the said *William* above likewise mentioned; the same *Edward* says, that he did not assume upon himself in the manner and form as the said *William* hath above against him declared: And of this he puts himself upon the country: And the said *William* thereof likewise, &c.

Non assumpsit to the second.

[57]

Joinder in demurrer.

And the said *William* says, that he by any thing by the said *Edward* in pleading alledged, as to the first promise and assumption in the declaration aforesaid abovementioned, ought not to be precluded from having his said action thereof against him, because he says, that the declaration aforesaid, and the matter in the same contained, as to the said first promise and assumption, are good and sufficient in law to maintain the action of him the said *William* thereof against the said *Edward* had; which said declaration, and the matter therein contained, he the said *William* is ready to verify and prove, as the court, &c. And because the said *Edward* doth not answer to that declaration, nor hitherto any way deny it, he the same *William* as before prays judgment and his damages by reason of those premisses to be adjudged to him, &c. But because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, whereof the parties aforesaid have put themselves on the judgment of the court, day therefore is given to the parties aforesaid, before the lord the king at *Westminster* until *Friday* next after the morrow of the Holy Trinity, to hear their judgment of and upon those premisses because the court of the said lord the king now here thereof not yet, &c. And to try as well the issue aforesaid between the parties aforesaid above joined by the country to be tried, as to inquire what damages the said *William* hath sustained by reason of the premisses aforesaid, whereof the parties aforesaid have put themselves on the judgment of the court, if it happens that judgment thereon be given for the said *William* against

For to try the issue and inquire of damages.

against the said *Edward Peirce*, let a jury thereon come before the lord the king at *Westminster* on the said day; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. At which day before the lord the king at *Westminster* comes as well the said *William* as the said *Edward* by their attornies aforesaid; and the said *William* acknowledges here in court that he will not farther prosecute against him the said *Edward* as to the second promise and assumption in his bill aforesaid above mentioned; and as to the said first promise and assumption in the declaration aforesaid above mentioned, whereof the parties aforesaid have put themselves on the judgment of the court, because the court of the said lord the king here is not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid, before the lord the king at *Westminster*, until *Thursday* next after three weeks of *St. Michael*, to hear their judgment thereof, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid, on which the premises aforesaid, as to the first promise and assumption aforesaid in the declaration aforesaid above mentioned, whereof the parties aforesaid have put themselves on the judgment of the court, being seen, and by the court of the said lord the king now here more fully understood, because it seems to the court of the said lord the now king here that the declaration aforesaid, and the matter in the same contained, as to that promise and assumption, are good and sufficient in law to maintain the action of him the said *William* thereof against the said *Edward* had, it is considered that the said *William* ought to recover his damages against the said *Edward*: But because the court of the said lord the now king here doth not know what damages the said *William* hath sustained by reason of the premises aforesaid, the sheriffs are therefore commanded that they diligently inquire by the oath of 12 good and lawful men of their bailiwick, what damages the said *William* hath sustained, as well by reason of the non-performance of the first promise and assumption aforesaid; as for his costs and charges by him about his suit in this respect laid out, and send the inquisition, which, &c. to the lord the king at *Westminster* on *Friday* next after the octave of *St. Hillary* under the seals, &c. and the seals, &c. together with the writ of the said lord the king to them therefore directed: The same day is given to the said *William* there, &c. On which day before the lord the king at *Westminster* comes *William Dunstar*, by his attorney aforesaid and the sheriffs of *London*, to wit, *Johan Raymond*, esq; and *Simon Lewis*, esq; by virtue of the writ of the said lord the king to them therefore directed, return a certain inquisition taken before them at the *Guild-hall* of the city of *London*, situate in the parish of *St. Lawrence* in the *Old-Jewry* in the ward of *Cheape* of the same city, on the 22d day of *January* in the 31st year of the reign of the lord *Charles* the second, now king of *England*, &c. by the oath of 12 good, &c. whereby it is found that the said *William Dunstar* hath sustained damages by reason of the premises aforesaid beyond his costs and charges by

Nolle Prosequi
as to part.
1 Plow. 4, 20.
Pract. Reg.
218, 220.

Judgment for
the plaintiff.

Writ awarded to
the sheriffs of
London to inquire
what damages
the plaintiff sus-
tained by breach
of the first pro-
mise.

The return.

Action on the case.

him about his suit in this respect laid out to 89*l.* and for those costs and charges to 26*s.* 8*d.* Therefore it is considered, that the said *William Dunstar* do recover against the said *Edward Peirce* his damages aforesaid by the inquisition aforesaid in form aforesaid found, and also 9*l.* 13*s.* 4*d.* for his costs and charges of increase, adjudged to the same *William* by the court of the said lord the now king here by his assent, which damages in the whole amount to 100*l.* and the said *Edward* in mercy, &c.

Note; a writ of error was afterwards brought in the exchequer chamber, and the judgment affirmed there.

[58]

Assumpsit against an administratrix for goods sold by the plaintiff to her intestate, and on an account stated with her intestate.

Plea. Intestate indebted by bond to several persons

WHEN, &c. and says that the said *Michael* ought not to have his action aforesaid thereof against her the said *Margaret*, because she says, that the said *John* in his life-time, to wit, 23d day of *July* in the fifth year of the now king, at *L.* aforesaid in the parish of *St. D.* in the ward of *Farringdon* without, by his certain writing obligatory sealed with the seal of the said *John Cole*, acknowledged himself to be bound to one *Brian Bromely*, gent. in 100*l.* of lawful money of *England*, to be paid to the same *Brian*, when he should be thereto required: And the same *Margaret* farther says that the said *John Cole* in his life-time afterwards, to wit, the 13th day of *December* in the 26th year of the reign of the said lord the now king, at *London* aforesaid in the parish and ward aforesaid, by his other certain writing obligatory sealed with the seal of the said *John* acknowledged himself to be bound to one *George Chapman* in 60*l.* of lawful money of *England*, to be paid to the said *George* when he should be thereto required: And afterwards, to wit, the 21st day of *May* in the 27th year of the reign of the said lord the now king, the said *John Cole* at *London* aforesaid in the parish and ward aforesaid died, (the several debts aforesaid by the writings obligatory aforesaid so as aforesaid due, or any part thereof, being then not paid or satisfied,) and that the several writings obligatory were entered into for true and just debts to the same *Brian* and *George* severally and respectively truly and really due: And the said *Margaret* farther says, that one *Timothy Trevers*, on *Friday* next after the morrow of the Holy Trinity last past, came before the lord the king at *Westminster* by *Carew Holford* his attorney, and produced in the court of the lord the king then there his certain bill against the said *Margaret*, administratrix of all and singular the goods and chattels, rights and credits, which belonged to the said *John Cole* her late husband deceased, being in custody of the marshal of the *Marshalsey* of the lord the king before the king himself, in a plea of debt, and there were pledges to prosecute, to wit, *John Doe* and *Richard Roe*; by which said bill the said *Timothy* complained of the said *Margaret* in a plea that she should render to the same *Timothy*

And also a judgment against her on a simple contract by the intestate.

110*l.* of lawful money of *England* which she owed him and unjustly detained, for this, to wit, that whereas the said *Timothy* and *John* in the life-time of the said *John*, to wit, on the first day of *April* in the seventh year of the reign of the said lord the now king at *London*, to wit, in the parish of *St Mary-le-bow* in the ward of *Cheape*, did account together between themselves concerning divers sums of money to the same *Timothy* from the said *John* then due and unpaid, and upon that account the same *John* was found in arrear to the said *Timothy* in the said 110*l.* to be paid to the said *Timothy* when he should be thereto required, whereby an action accrued to the said *Timothy* to demand and have of the said *John* in his life-time the said 110*l.* Nevertheless the said *John* in his life-time, or the same *Margaret* after the death of the said *John*, the said 110*l.* had not, nor had either of them yet paid to the said *Timothy*, but the said *John* in his life-time, and the said *Margaret* after his death, had altogether denied to pay him them, and that the said *Margaret* did then deny to pay, and unjustly detained them, to the damage of the said *Timothy* 20*l.* as he said: And therefore he produced the suit, &c. And the said *Margaret*, by *Walter Sloper* her attorney, then came and defended the force and injury, when, &c. And then said, that she could not deny the action of the said *Timothy*, nor but that she did detain from the said *Timothy* the said 110*l.* in the manner and form as the said *Timothy* above against her complained: Therefore it was then and there considered, that the said *Timothy* should recover against the said *Margaret* his debt aforesaid, as also 48*s.* 4*d.* for his damages which he had sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf laid out, to the same *Timothy* by the same court of the said lord the now king before the king himself by his assent adjudged of the goods and chattels which belonged to the said *John Cole* at the time of his death in the hands of the said *Margaret* to be administered, if she had so much in her hands; and if she had not so much in her hands, then the damages aforesaid of the proper goods and chattels of the said *Margaret* to be levied; and that the the said *Margaret* should be in mercy, &c. as by the record and process thereof remaining in the said court of the said lord the king here more fully appears: And the same *Margaret* farther says, that the said debt, by the said *Timothy* against the said *Margaret* in form aforesaid recovered, at the time of the death of the said *John Cole* was a true and just debt, and at the time of the death of the said *John Cole* and also at the time of the giving that said judgment against the same *Margaret* was unpaid, and that the judgment aforesaid yet remains in its full force and effect not reversed, annulled or satisfied: And the same *Margaret* farther says that she has fully administered all the goods and chattels which belonged to the said *John* at the time of his death, and that she hath not, nor on the day of the exhibition of the aforesaid bill of the said *Michael*, or ever after, had any goods or chattels which belonged to the said *John Cole* at the time of his death in her hands to be administered,

Which is a just debt.

[59]

And that she hath not assets.

Note; by the court and Saunders etc that satisfaction or payment pleaded is not traversable, but the fraud is the only thing to be traversed.

Action on the case.

administred, execept goods and chattels to the value of 40*l*. which are not sufficient to satisfy the said *Brian* and *George* the several debts aforesaid upon the several writings obligatory aforesaid so as aforesaid due, nor to satisfy the said *Timothy* his debt aforesaid in form aforesaid recovered, and which to the said writings, obligatory and to the same judgment are liable and bound: And this she is ready to verify: Wherefore she prays judgment if the said *Michael* ought to have or maintain his said action thereof against her, &c.

Repl'. As to one bond that it is most part paid.

And that he would accept 10*l*. in satisfaction.

The same replication to the other.

The same replication to the judgment.

And the said *Michael* says that he, by any thing by the said *Margaret* above in pleading alledged, ought not to be precluded from having his said action thereof against her, because as to the debt aforesaid by the writing obligatory aforesaid to the said *Brian B.* by the said *John Cole* in his life-time due, the said *Michael* says, that after the making of the writing obligatory aforesaid, and before the exhibition of the said bill of the said *Michael*, to wit, on the 5th day of *June* in the 27th year of the reign of the said lord the now king, at *London* aforesaid in the parish and ward aforesaid, great part of that debt, to wit, 40*l*. were paid to the said *Brian B.* and that the said *Brian B.* on the said 5th day of *June* in the 27th year above said, was ready to accept of the said *Margaret* a certain sum of money not exceeding 20*l*. to wit, 10*l*. in full satisfaction and discharge of the debt aforesaid by the said writing obligatory due to the said *Brian B.* and on the payment thereof to deliver up the said writing obligatory to the said *Margaret* to be cancelled: And as to the debt aforesaid by the writing obligatory aforesaid due to the said *George Chapman* from the said *John Cole* in his life-time, the same *Michael* says, that after the making of the witing obligatory aforesaid, and before the exhibition of the said bill of the said *Michael*, to wit, on the said 5th day of *June* in the 27th year above said, at *London* aforesaid in the parish and ward aforesaid, great part of that debt, to wit, 20*l*. were paid to the said *George Chapman*, and that the said *George Chapman* on the said 5th day of *June* in the 27th year above said, and always after hitherto, at *London* aforesaid in the parish and ward aforesaid, was ready to accept of the same *Margaret* a certain sum of money not exceeding 20*l*. to wit, 10*l*. in full satisfaction and discharge of that debt by the said writing obligatory due to the said *George Chapman*, and upon the payment thereof to deliver up the said writing obligatory to the same *Margaret* to be cancelled: And as to the judgment aforesaid by the said *Timothy Trevers* against the said *Margaret* in the said court of the said lord the now king before the king himself had, the same *Michael* says, that before the exhibition of the said bill of the said *Michael*, to wit, on the said 5th day of *June* in the 27th year above said, at *London* aforesaid in the parish and ward aforesaid, a great part of the said money by the said *Timothy Trevers* as aforesaid recovered, to wit, 100*l*. thereof, were paid and satisfied to the said *Timothy*, and that the said *Timothy* on the said 5th day of *June* in the 27th year above said, and always after hitherto, at

London

London aforesaid in the parish and ward aforesaid, was ready to accept of the same *Margaret* a certain sum of money not exceeding 20*l.* to wit, 10*l.* in full satisfaction and discharge of that judgment, and upon the payment thereof to acknowledge satisfaction upon the record of that judgment: And the same *Michael* farther says, that the said *Margaret*, on the day of the exhibition of the said bill of the said *Michael*, to wit, on the 10th day of *June* in the 27th year above said, at *London* aforesaid in the parish and ward aforesaid, had divers goods and chattels which belonged to the said *John Cole* at the time of his death in her hands to be administered, besides and beyond goods and chattels sufficient to discharge the several writings obligatory aforesaid, and the judgment aforesaid so as aforesaid had and obtained, wherewith she might have satisfied the said *Michael* for his damages aforesaid, to wit, at *London* aforesaid in the parish and ward aforesaid: And this he is ready to verify: Wherefore he prays judgment and his damages by reason of the premises to be adjudged to him, &c.

And that she hath assets sufficient.

And the said *Margaret* protesting, that a great or any part of the debt by the said writing obligatory due to the said *Brian B.* was not paid; and likewise protesting, that a great or any part of the debt by the said other writing obligatory due to the same *George Chapman* was not paid to the said *George Chapman*; protesting also, that the said *George Chapman* was not ready to accept of the same *Margaret* any sum of money not exceeding the sum of 20*l.* in full satisfaction of that debt by the said writing obligatory due to the same *George Chapman*, and upon the payment thereof to deliver up that writing to the same *Margaret* to be cancelled; and protesting also, that a great or any part of the said money by the said *Timothy Trevers* as aforesaid recovered was not paid to the same *Timothy*, nor that the said *Timothy* was ready to accept of the said *Margaret* any sum of money in full satisfaction and discharge of that judgment, and on payment thereof to acknowledge satisfaction on the record of the said judgment in manner and form as the said *Michael* above in replying thereto hath alledged, for plea the said *Margaret* as before says, that she has not, nor on the day of the exhibition of the bill of the said *Michael* aforesaid, or ever after, had any goods or chattels that belonged to the said *John Cole* at the time of his death, except the goods and chattels in the plea aforesaid above-mentioned, which are not sufficient to satisfy the said several writings obligatory and the judgment aforesaid: And of this she puts herself upon the country: And the said *Michael* thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after 15 days of *St. Hillary*; and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Rejoinder.
Protesting that no part was paid.
Plow. 276. Co.
Lit. 124, 125,
126. Lutw.
662.

[60]

Says she has not assets to satisfy the bonds and judgments.

Toone, widow, and Theobald.

Escame against
the sheriff for
refusing to arrest
the party on a
mesne process.
J. W. indebted
to the plaintiff.

Who sued out a
writ of *Alias*
capias,

and delivered it
to the sheriff.

Suffolk, to wit. **D***Dorothy Toone*, widow, complains of *Francis Theobald*, esq; late sheriff of the county aforesaid, being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, for this, to wit, that whereas one *John Wilmot* on the 10th day of *May* in the 15th year of the reign of the lord the now king, at *Palgrave* in the county aforesaid, was indebted to the said *Dorothy* in 200*l.* of lawful money of *England*, for divers wares and merchandizes by her the said *Dorothy* to the said *John*, at the special instance and request of the said *John*, before that time there sold and delivered; and the said *John* being so therein indebted, then and there in consideration thereof, assumed upon himself, and to the said *Dorothy* then and there faithfully promised, that he the same *John* the same 200*l.* to the said *Dorothy*, when he should be thereto after required, would well and faithfully pay and content: And in fact the said *Dorothy* says, that the said *John*, altho' he was often required to do it, hath not yet paid the said *Dorothy* the said 200*l.* but hath altogether refused to pay her them: And whereas also the said *Dorothy*, for the recovery of the said 200*l.* to the said *Dorothy* by the same *John* in form aforesaid being due and unpaid, afterwards, to wit, in *Hillary* term in the 16th year of the reign of the lord the now king, at *Westminster* in the county of *Middlesex*, prosecuted a certain writ of the said lord the king of *Alias capias* to the sheriff of the county of *Suffolk* aforesaid directed out of the court of the said lord the king before the king himself, the same court then being at *Westminster* in the county of *Middlesex* aforesaid; by which said writ of *Alias capias* the said lord the king commanded the sheriff of the county of *Suffolk* aforesaid (as the same then sheriff of the county of *Suffolk* aforesaid had been before commanded) that he should take the said *John Wilmot*, if he should be found in his bailiwick, and should safely keep him so that he might have his body before the said lord the king at *Westminster* on *Wednesday* next after fifteen days of *Easter* then next following, to answer to the said *Dorothy* in a plea of trespass, and also to the bill of her the said *Dorothy* against him the said *John Wilmot* for 200*l.* on promise, according to the custom of the court of the said lord the king, before the king himself to be exhibited, and that the said sheriff should have there then that writ: Which said writ of the said lord the king of *Alias capias* the same *Dorothy* afterwards and before the return of the same, to wit, on the 9th day of *April* in the 16th year of the reign of the lord the now king aforesaid, at *Palgrave* aforesaid in the county of *Suffolk* aforesaid, delivered to the said *Francis T.* (then being sheriff of the county of *Suffolk* aforesaid) in term of law to be executed: Which said writ of *Alias capias* aforesaid, in form aforesaid prosecuted, the same
Dorothy

Dorothy prosecuted with this intention, that the said *John Wil-*
mot might by virtue of the same writ be taken and arrested, and
that the said *Francis* the said sheriff of the county aforesaid
might have the body of the said *John* before the lord the king
at *Westminster*; so that at the said day of the return of the same
writ the said *John* might be committed to the custody of the
marshal of the *Marshalsey* of the court of the lord the king
before the king himself, according to the custom of the court
aforesaid; so that the said *John*, before he should go at large
out of such custody, might be compelled to put in sufficient
bail at the suit of the said *Dorothy*, on the bill of the said *Doro-*
thy against the said *John* for 200*l.* upon the promise abovementioned, according to the custom of the court aforesaid in the
same court to be exhibited: And whereas afterwards, and before
the return of the writ of *Alias capias* aforesaid, to wit, the said
9th day of *April* in the 16th year aforesaid, at *Palgrave* afore-
said in the county of *Suffolk* aforesaid, the said *John* was in the
presence of the said *Francis*, he the said *Francis* then being
sheriff of the county of *Suffolk* aforesaid, and the said *Dorothy*
then and there shewed to the said *Francis* the same *John Wilmot*,
and required the said *Francis* then and there to take and arrest
the said *John* according to the command of the said writ: Ne-
vertheless the said *Francis* not regarding his office of sheriff in
the true and just execution thereof, but contriving and fraudu-
lently intending to hinder the said *Dorothy* of her proper remedy
for the recovery of the said 200*l.* the day, year and place last
aforesaid, did not take and arrest the said *John*, nor had his
body before the said lord the king at *Westminster* on the said
day of the return of the said writ of *Alias capias*, nor at any
time after or before, but on the said *Wednesday* next after fifteen
days of *Easter* abovementioned, at *Westminster* in the county of
Middlesex, neglected to have the body of the said *John* before
the lord the king there, according to the command of the said
writ of *Alias capias*, although the said *Francis* might easily have
had the body of the same *John* there at that day, according to
the duty of his office of sheriff of the county aforesaid, whereby
the said *John* was not committed to the marshal of the *Mar-*
shalsey aforesaid, nor put in any bail at the suit of the said *Doro-*
thy, so that the said *Dorothy* could not exhibit her bill against
the said *John* for the 200*l.* upon the said promise and assump-
tion, according to the custom of the said court: And the said
John, immediately after the said day of the return of the writ
of *Alias capias* aforesaid, to places to the same *Dorothy* intirely
unknown escaped, and ever after hitherto hath eloined, abscond-
ed and absented himself, so that the said *Dorothy* is totally de-
prived and hindered of her remedy for the recovery of the said
200*l.* to the damage of the said *Dorothy* 200*l.* And therefore
she produces the suit, &c.

The sheriff re-
fused to arrest
the party tho' in
his presence.

[61]

And had not
the body at the
return of the
writ.

J. W. escaped
and absented
himself.

Not guilty.

Note; In this case the plaintiff recovered all her debt, and it
was paid her by the sheriff.

Bracebridge and Watson.

Case for words
whereby she lost
her marriage.

Warwick, to wit. *D*orothy *Bracebridge*, spinster, complains of *William Watson*, clerk, and *Cecilia* his wife, in the custody of the marshal, &c. for this, to wit, that whereas the said *Dorothy* is a good, true, chaste, honest, pious and liege subject of the lord the now king, and as such good, true, pious, chaste and honest subject of the lord the king from the time of her birth hitherto hath behaved herself and continued, and was accounted, said, known and reputed to be of a good name, reputation, condition, conversation, life and behaviour among her relations, friends and neighbours, and other subjects of the lord the now king, and from all manner of whoredom, adultery, fornication and incontinency, or the least suspicion of any such fault or hurtful crime during her whole life past lived exempt, innocent, free and wholly unsuspected, and lived and continued a virgin, all kind of modesty, sincerity, probity and honesty always desiring, embracing and exercising, by means whereof the said *Dorothy* not only deservedly got and obtained the favour and good will of her parents, friends and neighbours, and other faithful and creditable subjects of the said lord the now king, but also divers creditable persons and of great estates and reputation greatly desired the company and society of the said *Dorothy* on account of her pure, immaculate and incorrupt conversation: And whereas *Rebecca Bracebridge*, widow, mother of the said *Dorothy*, on account of the pure and immaculate life of the said *Dorothy*, did intend spontaneously of her own proper money to give and then was about to give to the said *Dorothy* the sum of 150*l.* of lawful money of *England* for the preferment of her the said *Dorothy*: And whereas *John Bracebridge* the brother of the said *Dorothy*, a man of great estate, had so great a love, favour and kindness for the said *Dorothy* on account of her pure, immaculate, and incorrupt conversation, that he the said *John* spontaneously intended to give and then was about to give to the said *Dorothy* the sum of 100*l.* of lawful money of *England* for the present support, preferment and augmentation of the portion of her the said *Dorothy*: Nevertheless the said *Cecilia* well knowing the premises, but maliciously envying the happy state and condition of the said *Dorothy*, and contriving and intending to scandalize the said *Dorothy* not only in her good name, fame, credit and reputation aforesaid, but also wholly to hinder and deprive her of the affection and love of the said *Rebecca* her mother and the said *John* her brother, and to cause her the said *Dorothy* to be brought into the final discredit and hatred of the said *Rebecca* and *John*, and other her relations, and all her friends and neighbours, and to be bereaved and deprived of all preferment from her parents, relations and friends, and of the great gifts and presents to the said *Dorothy* intended, on the 1st day of *June* in the 28th year of

of the reign of the lord *Charles* the second, now king of *England*, &c. at *Colehill* in the county aforesaid, falsely and maliciously said, asserted, related, proclaimed, and with a loud voice pronounced these false, feigned, scandalous and opprobrious words following of the said *Dorothy*, in the presence and hearing of several faithful and creditable subjects of the said lord the king, to wit, *Mrs. Bracebridge* (meaning the said *Dorothy Bracebridge* the now plaintiff) has had a bastard-child by *Mr. Sacheverell* (meaning one *George Sacheverell* of *Sutton Colefield* in the county aforesaid, esq;) and the child is kept at *Yardley* (meaning a certain village, called *Yardley* in the county of *Worcester*); by reason of the speaking and publishing of which said false, feigned, scandalous and opprobrious words, the same *Dorothy* not only had the great infamy and scandal of the hurtful and wicked crime of whoredom, fornication, and incontineny, among very many venerable and creditable persons with whom the same *Dorothy* was before in great honour, credit and esteem; and all other persons, who before the speaking and publishing of the said scandalous words used greatly to desire the company and society of the said *Dorothy*, withdrew themselves from the company and society of the said *Dorothy*, as from the company and society of an unchaste woman, and daily more and more withdrew themselves; but also by reason of the speaking and publishing of the said false, feigned, scandalous and opprobrious words aforesaid, the said *Rebecca Bracebridge*, the mother of the said *Dorothy*, and the said *John Bracebridge*, the brother of the said *Dorothy*, have absolutely refused, and yet do refuse, to give the same *Dorothy* the said 150*l.* and the said 100*l.* And also for the same reason the said *Dorothy* hath intirely lost the love, esteem and favour of her said mother and brother, and also of all her relations and friends, and her preferment therein aforesaid; whereby the same *Dorothy* says that she is prejudiced, and has damage to the value of 300*l.* And therefore she produces the suit, &c.

The words.

[62]

Sayle and Frank.

York, to wit, *John Sayle* complains of *Edward Frank*, otherwise *Ajbbon*, esq; in the custody of the marshal, &c. for this, to wit, that whereas the said *John* continually for the space of four years now last past was and yet is seised of a messuage and 50 acres of land, with the appurtenances, lying in *Campfall* in the said county of *York*, in his demesne as of fee; and the same *John*, and all they whose estate he has in those tenements, from time out of mind have had, and were used to have, common of pasture in a certain great pasture in *Campfall* in the county aforesaid, called *Campfall Barnsdale*, for all their commonable cattle in and upon the said messuage and 50 acres of land, levant and couchant every year at all times of the year as to the said messuage and 50 acres of land, with the appurtenances;

Case for destroying the common with rabbits.

Prescription for common of pasture.

Action on the case.

purtenances, belonging and appertaining: Nevertheless the said *Edward* not ignorant of the premisses, but contriving and unjustly intending to hinder the said *John* from having his common of pasture aforesaid in the said pasture called *Campsall Barnsdale*, and of the profit of the same totally to deprive him, on the first day of *December* in the 27th year of the reign of the lord the now king, and continually after hitherto, so many rabbits, to wit, 10,000 rabbits in and upon the said great pasture called *Campsall Barnsdale* maintained and kept, that by reason thereof the greatest part of the herbage there for all the said time was consumed and eaten up, whereby the said *John* could not have and take during all the time aforesaid his common of pasture aforesaid for his cattle in and upon the said messuage and 50 acres of land, with the appurtenances, levant and couchant in the said great pasture called *Campsall Barnsdale*, in so ample and beneficial a manner as he before had and was used to have, and of right ought to have: whereby the same *John* says that he is prejudiced, and has damage to the value of 50*l.* And therefore he produces the suit, &c.

Ballard and Tayler.

Declaration in the marshal's court for indicting the plaintiff for a riot, which indictment was found ignorant.

Palace Court, to wit. *Thomas Ballard* by *Henry Wright* his attorney complains against *William Tayler* in a plea of trespass on the case, for this, to wit, that whereas the said plaintiff now and always was and is a peaceable and quiet man, and not a rioter, router or breaker of the peace of the said lord and lady the king and queen: Nevertheless the defendant not being ignorant of the premisses, but contriving and maliciously intending to scandalize and disquiet the said plaintiff, him the said plaintiff, for that the said plaintiff with other malefactors and disturbers of the peace of the said king and queen to the number of ten persons, at the parish of *St. Mary Matfellow*, otherwise *Whitechappel*, in the county of *Middlesex*, and within the jurisdiction of this court, on the 16th day of *September* in the second year of the reign of the lord and lady *William and Mary*, now king and queen of *England*, &c. as rioters, routers and disturbers of the peace of the lord and lady the now king and queen, to disturb the peace of the said lord and lady the queen, with force and arms, &c. at the parish aforesaid in the county aforesaid, unlawfully, riotously and routously assembled themselves and met together, and being so then and there assembled and met together, him (the defendant) in the peace of God and of the said lord and lady the king and queen then and there unlawfully, riotously and routously beat, wounded and ill treated, so that his life was despaired of, and other enormities to the said defendant then and there unlawfully, riotously and routously offered, to the great damage of him the defendant, and against the peace of the said lord and lady the now king and queen, their crown and dignity, &c. without any just

or probable cause, before the justices of the said now king
queen assigned to preserve the peace in and for the county of
Middlesex aforesaid, at a session of the peace held at Hicks's
Hall in the county of Middlesex for the county of Middlesex
aforesaid, on the first day of October in the second year above-
said, caused and procured to be indicted, and the same plaintiff
that account prosecuted until he the said plaintiff was thereof
acquitted, to the damage of the said plaintiff 99s. And
therefore he produces the suit, &c.

[63]

Stephens and another against Wickham and others.

Gloucester, to wit. **T**homas Stephens, esq; and Robert Parker,
esq; complain of John Wickham, Samuel
Burcomb and John Burcomb, in the custody of the marshal, &c.

Case for hinder-
ing the plaintiff
in the use of his
market.

For this, to wit, that whereas the said Thomas and Robert on the
29th day of October in the 31st year of the reign of the lord
Charles the second, now king of England, &c. and continually
afterwards until the day of the exhibition of this bill, to wit, the
20th day of April in the 33d year of the reign of the said lord
the now king were and yet are seised as of fee and right of and
in a certain market held and to be held on Thursday in every week
in Chipping Sodbury, otherwise Sodbury Burrough in the county
aforesaid, for divers merchandizes, things, goods and chattels
there to be bought and sold, and also among other things of the
liberty and franchise of having and keeping publick beams, bal-
ances and weights, and of the same there publickly using; by
reason of which said market and franchise the said Thomas and
Robert for all the time aforesaid were lawfully intitled to have and
receive sundry tolls, stallages, piccages, weighages, pitching
pence and other profits of several persons to the said market com-
ing and there buying and selling, to the market aforesaid belong-
ing: Nevertheless the said John Wickham, Samuel Burcomb and
John Burcomb, not ignorant of the premiffes, but maliciously
contriving and intending to aggrieve them the said Thomas Ste-
phens and Robert Parker in the premiffes, and to exclude and
deprive them of the franchise and profits of their market afore-
said, and particularly of the profits of taking and receiving the
said pitching pence, and the other profits of the publick ballances
and weights aforesaid in the market aforesaid, they the said John
Wickham, Samuel Burcomb and John Burcomb, on the said 29th
day of October in the 31st year of the reign of the said lord the
now king aforesaid, and at divers other days and times in the
time of the said market between the 29th day of October in the
31st year of the reign of the said lord the now king aforesaid,
and the time of the exhibition of this bill at Chipping Sodbury,
otherwise Sodbury Burrough aforesaid, of their own wrong, with-
out any lawful or legal authority, maliciously and unjustly came
into the said market, and there unjustly collected and received,
or caused to be collected and received, and to their own proper
use

Seised in fee of
the market, and
kept publick
weights, and had
toll, &c.

The disturbance
by the defen-
dants.

use converted, the said pitching pence, and the profits of the publick ballances and weights aforesaid, whereby they the said *Thomas Stephens* and *Robert Parker* lost the said pitching pence and the profits of the said publick ballances and weights for the time aforesaid, to the damage of them the said *Thomas Stephens* and *Robert Parker* 200*l*. And therefore they produce the writ, &c. Note; this cause was tried at the bar before *Saunders* chief justice, and the plaintiffs recovered.

The Company of Stationers against Marlowe.

Easter 32 Car. 2. Roll 213.

Case for printing
almanacks with-
out the consent
of the patentee.

Midd', to wit. *John Marlowe* late of *London*, printer, was attached to answer the master and keepers, wardens and commonalty of the mystery or art of stationers of the city of *London* in a plea of trespass on the case, &c. And whereon the same master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London* by *Jervase Gill* their attorney complain, why whereas the late king *James* late king of *England*, grandfather of the lord the now king, by his letters patent sealed with the great seal of *England* bearing date at *Westminster* 8th day of *March* in the thirteenth year of his reign, of his special grace, certain knowledge and meer motion for himself, his heirs and successors, gave and granted to the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London* and their successors for ever, full power, privilege and authority to print all almanacks in the *English* tongue within this kingdom of *England*: And the same lord the king by his said letters patent strictly forbid, prohibited and commanded all and singular other printers, booksellers, and all other officers, ministers and subjects whomsoever of the said lord the king, his heirs and successors, that they, or any of them, at any time or times thereafter should not print, or cause to be printed or bought from part beyond the sea, nor should buy, utter or sell, or cause to be bought, uttered or sold, any almanacks in the *English* tongue other than such as should be printed by the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, and their successors, as by the letters patent aforesaid, an exemplification whereof under the great seal of the said lord the now king, bearing date at *Westminster* the sixth day of *December* in the 27th year of his reign, the same master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London* produce here in court, is more fully manifest and doth appear; by virtue of which said letters patent of the said lord *James* late king of *England*, &c. they the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London* have had and ought to have the power authority and privi-

[64]

The breach assigned.

solely to print all almanacks in the *English* tongue: Never-
theless the said *John* not ignorant of the premisses, but contriving
intending to deceive and defraud them the said master and
keepers, or wardens and commonalty of the mystery or art of
stationers of the city of *London*, of the benefit of the privilege
afore said, on the fourth day of *November* in the 31st year of the
reign of the said lord the now king at *Westminster* in the county
Middlesex afore said, without the licence or consent of the said
master and keepers, or wardens and commonalty of the mystery
or art of stationers of the city of *London* in that behalf had, sold
100 almanacks printed by divers persons unknown, without the
licence and consent of the said master and keepers, or wardens and
commonalty of the mystery or art of stationers of the city of *London*
in the *English* tongue, contrary to the form and effect of the
letters patent afore said, in contempt of the said lord the now
king, and contrary to the privilege to the same master and
keepers, or wardens and commonalty of the mystery or art of
stationers of the city of *London* granted; whereby the same mas-
ter and keepers, or wardens and commonalty of the mystery or
art of stationers of the city of *London* say, that they are preju-
diced, and have damage to the value of 100*l*. And therefore
they produce the suit, &c.

Cooper, Bart. and St. John, Esq;

Vilts, to wit. *Anthony Ashley Cooper*, bart. complains of *Ni-*
cholas St. John, esq; in the custody of the mar-
shal, &c. for this, to wit, that whereas the said *A.* on the third
day of *August* in the 18th year of the reign of the lord *Charles* the
second now king of *England*, &c. was seised and yet is seised of
and in a close of pasture containing 124 acres, and of another
close of pasture containing 80 acres, lying within the close afore-
said, known by the names of the *Purlewes*, otherwise *Russells*
Wood, lying in *Liddiard Millicent* in the county afore said, in his
demefne as of fee; which said several closes on the said third day
of *August* in the 18th year above said, and for divers years now
last past, for the preservation of the grafs in the same closes re-
spectively growing, by the same *Anthony Ashley Cooper* were well
and sufficiently fenced and hedged round: And whereas the said
close of pasture containing 124 acres now is and from time im-
memorial was next adjoining to a certain other common field
called *Purton Common* on the north east and north west, and to a
certain other common field known by the name of *Webbs Purlewe*
on the south west, and which said fields lie together not separated
or divided by any hedges or fences: And whereas the grafs in the
two closes afore said yearly for the space of six years now last past
respectively growing was well worth 60*l*. of lawful money of
England: The said *N.* not ignorant of the premisses, but con-
triving and maliciously intending totally to deprive the said *A.* of
the whole profit and advantage of the closes afore said, on the said
third

Case for break-
ing down the
plaintiff's inclo-
sure, whereby
the cattle of di-
vers persons es-
caped into the
plaintiff's close.

third day of *August* in the 18th year abovesaid, at *Liddiard* *Me*
cent abovesaid in the county abovesaid, the hedge, to wit, 10 per
of hedge of the said close containing, as abovesaid, 80 acres
the said *A.* broke and threw down, and the hedge so broke
thrown down from the said third day of *August* in the 18th ye
abovesaid until the 23d day of *October* in the 23d year continu
and kept, whereby sundry cattle, to wit, horses, oxen, cow
sheep, heifers and calves of several persons going and depastur
in the said common fields during that time, on the said third d
of *August* in the 18th year abovesaid, and on divers other da
and times between the same third day of *August* and the said
day of *October* in the 23d year abovesaid, from that time un
and upon the said close of pasture containing as abovesaid 1
acres of the said *A.* thro' the breach in the hedges of that clo
by the breaking and throwing down of those hedges as afore
made, enter'd, and from that close unto and upon the said o
close of pasture containing as abovesaid 80 acres of the said
thro' the like breach in the hedges of that close by the said bre
ing and throwing down of those hedges so as abovesaid made w
and escaped, and the grass of the said *Anthony* to the value
300*l.* in those closes during the time abovesaid respectively
abovesaid growing, at divers days and times during that time
up, trod down and consumed, whereby the same *A.* the wh
profit and advantage of those closes for the whole time afore
lost, to the damage of the said *A.* 500*l.* And therefore he p
duces the suit, &c.

[65]

Bluck against Wright, one, &c.

Issue directed out
of chancery to
settle a difference
between, an exe-
cutor and donee
concerning tal-
lies.

London, to wit. *W*illiam *Bluck*, gent. executor of the
will and testament of *William Bluck*,
deceased, complains of *Henry Wright*, gent. one of the cler
of *Rowland Holt*, esq; and *Robert Coleman*, gent. chief cler
the lady the queen, assigned to inrol pleas in the court of
said lady the queen before the queen herself, according to
liberty and privilege for such chief clerk and his clerks for t
out of mind used and approved in the same court, present h
in court in his proper person, for this, to wit, that whereas
said *William Bluck* now deceased, in his life-time, to wit,
London abovesaid in the parish of *St. Mary-le-bow* in the war
Cheape, was possessed of seven tallies and seven orders in w
ing, made at the exchequer of the said lady the now queen
the same tallies belonging and appertaining, as of his own p
per tallies and orders, two of those orders being respecti
number'd with the numbers 155 and 156, and made at the
chequer abovesaid, in pursuance of a certain act of parliam
intituled, *an act for granting an aid to her majesty by contin*
the duties on malt, cyder and perry for one year, and both of t
bearing date 26th day of *January* in the year of the Lord 17
and the five orders the residue thereof being number'd with

num

numbers following, to wit, 1006, 1007, 1008, 1009, 1010, and made at the exchequer aforesaid, in pursuance of a certain act of parliament, intituled, *an act for granting to her majesty a land-tax to be raised in the year 1704*, each of the said five orders last mentioned bearing date 23d day of *December* in the year of the Lord 1703 aforesaid, and by reason of those tallies and the said orders in writing, there was due and payable to the said testator the sum of 3100*l.* principal money; which said tallies and orders, at *London* aforesaid in the parish and ward aforesaid, came to the hands of the said *Henry*: And whereas after the death of the said testator, to wit, on the first day of *October* in the fifth year of the reign of the lady *Anne* now queen of *England*, &c. at *London* aforesaid in the parish and ward aforesaid, a certain discourse was had and moved between the said *William* the executor and the said *Henry* of and concerning those tallies and orders, and the possession of the said *Henry* thereof; and upon that discourse the same *Henry* then and there affirmed, that the tallies and orders aforesaid were delivered, and each of them was delivered by the said *William* the testator to the same *Henry*, by way of gift of the principal money due on those tallies and orders, to the proper use and benefit of the said *Henry*; the interest nevertheless for that principal money to be paid to the same *William* the testator during his life, which said affirmation the said *William* the executor then and there denied; and thereupon the said *William* the executor, at the instance of the said *Henry*, paid to him 20*s.* and in consideration thereof the same *Henry* assumed upon himself, and then and there faithfully promised the said *William* the executor to pay him 40*s.* if the tallies and orders aforesaid were not delivered, and every of them was not delivered, by the said *William* the testator to the same *Henry* by way of gift of the principal money due on those tallies and orders, to the proper use and benefit of the said *Henry*, as aforesaid: And the same *William* the executor in fact says, that the tallies and orders aforesaid were not delivered, nor was any of them delivered, by the said *William* the testator to the same *Henry* by way of gift of the principal money due on the tallies and orders aforesaid, to the proper use and benefit of the said *Henry*, as the said *Henry* had above alledged: Nevertheless the said *Henry* his promise and assumption aforesaid not regarding, but contriving and fraudulently intending the same *William* the executor in this behalf craftily and subtilly to deceive and defraud, the said 40*s.* or any penny thereof, to the said *William* the executor (altho' to do it by the same *William* afterwards, to wit, the fifth day of *October* in the fifth year aforesaid, at *London* aforesaid in the parish and ward aforesaid, he was required) hath not paid, but hath hitherto altogether refused, and yet doth refuse to pay him the same, to the damage of the said *William* the executor 10*l.* And therefore he produces the suit, &c.

And the said *Henry* in his proper person comes and defends the force and injury when, &c. and says, that the said *William* the

[66]
Plea.

Action on the case.

the executor ought not to have or maintain his said action against him, because he says, that well and true it is that he the same *Henry* was possessed of the tallies and orders aforesaid, and assumed upon himself in manner and form, as the same *William* the executor by his declaration aforesaid hath above supposed. But the said *Henry* farther says, that the tallies and orders aforesaid were delivered, and each of them was delivered, by the said *William* the testator to the same *Henry*, by way of gift of the said principal money due on the tallies and orders aforesaid, to the proper use and benefit of the said *Henry*; the interest nevertheless for that principal money to be paid to the said *William* the testator during his life, as the same *Henry* above affirmed, to wit, at *London* aforesaid in the parish and ward aforesaid. And of this he puts himself on the country: And the said *William* the executor thereof likewise, &c. Therefore let a jury thereon come before the lady the queen at *Westminster* on *Wednesday* next after three weeks of the Holy Trinity; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Issue.

Collins against Ford.

An issue out of
chancery con-
cerning a part-
nership.

The discourse.

The point in
question.

London, to wit. *Thomas Collins* complains of *John Ford* being in the custody of the marshal of the *Marshe* of the lord the king before the king himself, for this, to wit, that whereas on the first day of *May* in the 34th year of the reign of the lord *Charles* the second, now king of *England* &c. at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, a certain discourse was had and moved between the said *Thomas* and the said *John* of and concerning a partnership or joint trade in the business of a bookfeller between him the said *Thomas* and the said *John* before that time had and managed, and of and concerning certain exceptions taken in a certain suit or plaint between him the said *Thomas* and the said *John* in the court of chancery then before levied and prosecuted, and of and concerning divers sums of money, in the whole amounting to 128 *l.* 10 *s.* of lawful money of *England*, in the third exception of those exceptions mentioned; upon which said discourse so as aforesaid had and moved a question then and there arose between him the said *Thomas* and the said *John*, whether the said sum of 128 *l.* 10 *s.* or any part thereof, was taken by the said *John*, to the proper use of him the said *John*, out of the said partnership or not: And thereupon the said *John* afterwards, to wit, the same day and year, at *London* aforesaid in the parish and ward aforesaid, in consideration that the said *Thomas*, at the special instance and request of the said *John*, had then and there paid to the said *John* 5 *s.* of lawful money of *England*, assumed upon himself and to the said *Thomas* then and there faithfully promised, that he the said *John* would pay to the said *Thomas* 40 *s.* of lawful money

mone

money of *England*, if the said sum of 128 *l.* 10 *s.* or any part thereof, was taken and had by the said *John*, to the proper use of the said *John*, out of the said partnership: And the said *Thomas* in fact says, that the said sum of 128 *l.* 10 *s.* was had and taken by the said *John*, to the proper use of the said *John*, out of the said partnership: Nevertheless the said *John* his promise and assumption aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same *Thomas* in this behalf craftily and subtilly to deceive and defraud, the said 40 *s.* to the said *Thomas* hath not paid, nor the said *Thomas* any way for the same hitherto contented, altho' to do it the said *John* afterwards, to wit, the second day of *May* in the 34th year above-said, at *London* aforesaid in the parish and ward aforesaid, by the same *Thomas* was required, but the said *John* the said 40 *s.* to the said *Thomas* to pay, or the said *Thomas* for the same any way to content hath altogether refused, and yet doth refuse; whereby the said *Thomas* says that he is prejudiced, and hath damage to the value of 5 *l.* And therefore he produces the suit, &c.

And the said *John* by *John Lilly* his attorney comes and defends the force and injury, when, &c. and says, that well and true it is that he the said *John* assumed upon himself in manner and form as the said *Thomas* above thereof against him hath declared; but the same *John* farther says, that the said *Thomas* his action aforesaid thereof against him ought not to have or maintain, because he says, that the said sum of 128 *l.* 10 *s.* or any parcel thereof, was not taken and had by the same *John Ford*, to the proper use of the said *John*, out of the said partnership, as by the declaration aforesaid is above supposed: And of this he puts himself on the country: And the said *Thomas* thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on day next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Plea;

Ponder against Braddill.

[67]

London, to wit. *Nathaniel Ponder* complains of *Thomas Braddill* in the custody of the marshal, &c. for this, to wit, that whereas the said *Nathaniel*, on the first day of *May* in the 30th year of the reign of the lord *Charles the second*, now king of *England*, &c. and continually afterwards hitherto, at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, was and yet is the true proprietor of the copy of a certain book, intituled *The pilgrim's progress from this world to that which is to come, delivered under the similitude of a dream, wherein is discovered the manner of his setting out, his dangerous journey and safe arrival at the desired country*, by *John Bunnyon*: And that he the said *Nathaniel* after he became proprietor of the book aforesaid printed 2000 books of the same copy, and on the 20th day of *January* in the 30th year of the reign of the lord the

Declaration for printing the plaintiff's copy without his leave.

The plaintiff proprietor of the copy.

And that he had printed an impression,

The cause of
action.

now king aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, had in his hands 100 books and more of the impreſſion, and the ſame 20th day of *January* in the 30th year aforeſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, was imprinting 4000 books of the ſame copy: Nevertheleſs the ſaid *Thomas* not ignorant of the premiſſes, but contriving and fraudulently intending totally to deprive him the ſaid *Nathaniel* of the whole benefit of his copy aforeſaid, afterwards, to wit, the ſaid 20th of *January* in the 30th year aforeſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, 4000 books of the ſaid copy of the book of him the ſaid *Nathaniel*, intituled *The pilgrim's progreſs from this world to that which is to come, delivered under the ſimilitude of a dream, wherein is diſcovered the manner of his ſetting out, his dangerous journey and ſafe arrival at the deſired country, by John Bunnyon*, without the licence and conſent of the ſaid *Nathaniel* did print, and then and there expoſed to ſale, whereby the ſame *Nathaniel* totally loſt the whole profit and benefit of the copy of his book aforeſaid, intituled *The pilgrim's progreſs from this world to that which is to come, delivered under the ſimilitude of a dream, wherein is diſcovered the manner of his ſetting out, his dangerous journey and ſafe arrival at the deſired country, by John Bunnyon*; whereby the ſaid *Nathaniel* ſays that he is prejudiced, and hath damage to the value of 200 l. And therefore he produces the ſuit, &c.

Day and Hellington.

Caſe for dilapidations brought
againſt an executor on the cuſtom of *England*.
Degg's Parſon's Counſellor 92.
Clergyman's Law 311.
Pract. Reg. 461.

That the teſtator
was legal rector,

Glouc', to wit. *Richard Day*, clerk, rector of the rectory of *Long Marſton*, otherwiſe *Marſton Sicca* in the county aforeſaid, complains of *George Hellington*, gent. executor of the laſt will and teſtament of *William Hellington*, clerk, late rector of the rectory aforeſaid, deceased, in the cuſtody of the maſtral, &c. for this, to wit, that whereas by the laws of the land of this kingdom of *England*, all and ſingular prebendaries, rectors and vicars of this kingdom of *England* are bound and ought to repair and ſuſtain all and ſingular the houſes and buildings of their prebends, rectories and vicarages, and to leave them well and ſufficiently repaired and ſuſtained to their ſucceſſors, and that if ſuch prebendaries, rectors and vicars, do not leave ſuch houſes and buildings to their ſucceſſors ſo as aforeſaid well and ſufficiently repaired and ſuſtained, but ſhall permit them to be unrepaired and dilapidated, then the executors or adminiſtrators of the goods and chattels of ſuch prebendaries, rectors and vicars, having ſufficient of ſuch goods and chattels, are bound and ought to ſatiſfy ſuch a ſum of money as is ſufficient to be expended and paid for the neceſſary reparation and building of ſuch houſes and edifices: And whereas the ſaid *William Hellington* in his life-time, to wit, the day of in the year of the Lord at in the county of *Glouceſter*, was lawful rector of the rectory of *Long Marſton*, otherwiſe *Marſton Sicca* aforeſaid, thereto

thereto lawfully instituted and inducted, and was seised in the right of the rectory aforesaid of and in one house, one barn, and one garden thereto belonging, situate, lying and being in *Long Marston*, otherwise *Marston Sicca* aforesaid in the county aforesaid, and afterwards, to wit, day of in the year at *Long Marston*, otherwise *Marston Sicca* aforesaid in the county aforesaid, died thereof seised, after whose death, to wit, the day of in the year he the said *Richard Day* at *Long Marston*, otherwise *Marston Sicca* aforesaid, in the county aforesaid, to the rectory aforesaid with the appurtenances was lawfully presented, instituted and inducted, and yet is lawful rector of the same: And in fact the said *Richard* says, that at the time of the death of him the said *William*, to wit, the said day of in the year the said house of the rectory of *Long Marston*, otherwise *Marston Sicca* aforesaid, in the county aforesaid, was very ruinous and in decay for want of repairs, and that great part of the barn thereto belonging, to wit, one half thereof in the lifetime of the said *William*, to wit, the day of in the year at *Long Marston*, otherwise *Marston Sicca* aforesaid, in the county aforesaid, fell down and was not by him rebuilt, and the rest of the said barn was very ruinous and in decay for want of repair at the said time of the death of him the said *William*, and that the fence of the garden aforesaid then and there was very ruinous and in decay for want of repair: And the said *Richard* farther says, that the money to be expended in the repairs of the said house, the fence of the garden, and so much of the barn standing at the said time of the death of the said *William*, as also to rebuild so much of the barn as was fallen at the said time of the death of the said *William*, would amount to the sum of 200*l*. and therefore the said *Richard* afterwards, to wit, the day of in the year at *Long Marston*, otherwise *Marston Sicca* aforesaid, in the county aforesaid, to the same *George* gave notice, and then and there demanded of him the said *George* for that purpose the sum of 200*l*. Nevertheless the said *George* contriving and fraudulently intending the same *Richard* in this behalf craftily and subtilly to deceive and defraud, although he had sufficient of the goods and chattels of the said *William* in his hands to be administered, the said 200*l*. or any parcel thereof, or any sum of money for and towards the repairs aforesaid, to the same *Richard* hath not yet paid, but to pay him the same hath hitherto altogether denied, and yet doth deny, to the damage of the said *Richard* 300*l*. And therefore he produces the suit, &c.

and died seised,

The plaintiff presented, &c. thereto, and is now lawful rector.

[68]

The buildings in decay.

The particulars.

Damages demanded.

Refusal.

Moore against Plumley.

Chester, to wit. *Henry Moore*, clerk, doctor of laws, rector of the moiety of the parochial church of *Malpas* in the county of *Chester* aforesaid, complains of *John Plumley* executor of the last will and testament of *Thomas Sandys*, clerk, late rector of the said moiety of the parochial church aforesaid,

Case for dilapidations by the rector against the executor of his predecessor.

said, being in the custody of the marshal of the *Marshalsey* of the lady the queen before the queen herself, for this, to wit, that whereas according to the law and custom of *England* hitherto obtained, used and approved, all and singular prebendaries, rectors and vicars, within *England* aforesaid, for the time being are obliged and ought to repair and sustain all and singular the houses and edifices of their prebends, rectories and vicarages, and to leave them to their successors repaired and sustained: And if such prebendaries, rectors and vicars, should not leave such houses and edifices to their successors so as aforesaid repaired and sustained, but should leave them unrepaired and dilapidated, the executors of the said prebendaries, rectors and vicars, after their decease are obliged and ought of the goods and chattels of the same testators to satisfy to those successors, prebendaries, rectors and vicars respectively, such sums of money as will be sufficient to be expended and paid for the necessary reparation and rebuilding of such houses and edifices: And whereas the said *Thomas Sandys*, late rector of the said moiety of the church aforesaid, in right of that rectory was seised of and in a mansion-house, with the appurtenances, in *Malpas* aforesaid in the county of *Chester* aforesaid, and of and in the north side of the chancel of the church aforesaid; and the said *Thomas Sandys* being rector of the said moiety of the said church in form aforesaid, and so as aforesaid being seised, on the 12th day of *August* in the 12th year of the reign of our lady *Anne* by the grace of God queen of *Great Britain*, &c. at *Malpas* aforesaid died: And the said *Henry Moore* afterwards, to wit, on the 15th day of *December* then next following, to the said moiety of the parochial church aforesaid, vacant by the death of the said *Thomas Sandys*, was presented and admitted, instituted and inducted into the same, and became and yet is the proper rector of the same: And the said *Henry* in fact says, that at the time of the death of the said *Thomas Sandys* the said mansion-house, with the appurtenances, and the said north side of the church aforesaid, were unrepaired and dilapidated, and that such sum of money, as at the time of the death of the said *Thomas Sandys* was sufficient to be expended for the necessary repairs of the premises aforesaid, amounts, and at the same time of the death of the said *Thomas Sandys* amounted to the sum of 69 *l.* 7 *s.* of lawful money of *Great Britain*: Nevertheless the said *John Plumley* after the death of the said *Thomas*, although often required, hath not satisfied to the same *Henry* a sufficient sum of money for the necessary reparation of the premises so as aforesaid unrepaired and dilapidated, but hath altogether refused and yet doth refuse in any manner to satisfy him the same therefore, to the damage of the said *Henry* 100 *l.* And therefore he produces the suit, &c.

Wallbank

Wallbanck and Bucknall and others.

Midd, to wit. *R*alph Bucknall late of London, esq; John Bucknall late of London, esq; and William Hall late of London, gent, were attached to answer unto John Wallbanck, gent, in a plea of trespass on the case, &c. And whereon the said John Wallbanck by John Lilly his attorney complains, why whereas, according to the law and custom of the kingdom of the lord the king of England hitherto used and approved, every person of the same kingdom is bound to keep his fire safe and secure by day and by night, so that no damage may any way happen to his neighbours, for want of good care of his fire the said Ralph (the other two should be named here, or their names struck out above) on the 10th day of August in the 36th year of the reign of the lord Charles the second, now king of England, &c, at St. Martin in the Fields in the county of Middlesex aforesaid, so negligently and inconsiderately kept his fire, that for want of good care of that fire a mansion-house of the said John Wallbanck in the parish and county aforesaid, being in the possession of the said John Wallbanck there, and of which the said John Wallbanck was then and there possessed for the residue of a term of eleven years, which said term began from the feast of St. Michael the archangel in the 31st year of the reign of the said lord the now king, was by that fire burnt down, and sundry goods and chattels of the said John Wallbanck, to wit, a study of books, one hundred and ten pictures, ten tables, four Turkey-work carpets, forty-three chairs, four couches, eight brass sconces, eight gilt sconces, eight brass locks with their keys, one bird cage, twenty alabaster images, ten China basons, thirty-three brass pots, three brass kettles, sixty glass bottles, two hundred gallons of claret, three presses for books, twenty yards of silk sashes for windows, four guns, four pistols, six feather-beds, six bedsteads, ten trunks, thirty curtains, thirty blankets, ten coverlets, one hundred yards of lace, thirty pair of sheets, thirty table cloths, sixty napkins, one hundred yards of mohair cloth, six looking-glasses, six pair of tongs, six iron grates, six poker, a jack, two clocks, six boxes, six stools, ten chests, six hogsheds of beer, ten hogsheds of ale, forty silver spoons, four pair of bellows, ten spits, three fire-shovels, three iron pots, four basters, six pair of andirons, twenty candlesticks, twenty pillows, thirty pillowbers, thirty towels, six hats, twelve shirts, twelve caps, twelve cravats, four pair of boots, four belts, four swords, four cloaks, ten coats, ten pair of breeches, four periwigs, three gowns, six pair of gloves, twenty pair of stockings, ten pair of shoes, six womens silk gowns, ten petticoats, ten stomachers, twelve shifts, twelve coifs, five hundred yards of woollen cloth, five hundred yards of linsley woolsey, and five hundred ounces of silver plate, to the value of 1500*l*. of the said John Wallbanck in the same

Case on the custom of England for the negligent keeping of fire.

The cause of action.

The plaintiff possessed of a house for a term of years.

A list of household goods.

house then and there were burnt, to the great damage of the said *John Wallbanck*; whereby the said *John Wallbanck* says that he is prejudiced, and has damage to the value of 1500*l*. And therefore he produces the suit, &c.

Hodgson and Kay.

Case for not repairing the fences, whereby the plaintiff's cattle escaped thro' the land of another and were impounded.
Salk. 768.

York, to wit, *Horace Kay* late of *Barnibus* on *Dun* in the county aforesaid, gent. was attached to answer to *Thomas Hodgson*, knt. in a plea of trespass on the case, &c. And whereon the same *Thomas* by *John Arthur* his attorney complains, why whereas the said *Thomas* on the first day of September in the 34th year of the reign of the lord *Charles* the second, now king of *England*, &c. was seised and yet is seised of and in a close called *Willow Bridge*, situate, lying and being in *Barnibus* on *Dun* in the county aforesaid, in his demesne as of fee; which said close now is and from time immemorial was next and contiguous adjoining to the close of the said *Horace*, at *B.* on *D.* aforesaid in the county aforesaid, on the part thereof; which said close of the said *Horace* on the part thereof, for all the time aforesaid was and yet is next and contiguous adjoining to a certain common field called common, situate in *B.* on *D.* aforesaid in the county aforesaid: And whereas the said *Horace*, and all they whose estate the said *Horace* now has of and in the said close called were used and accustomed to repair and amend the hedges and fences between the said close of the said *Thomas* called *W.* and the said close of the said *H.* called with all necessary reparations, as often as occasion required: Nevertheless the said *H.* contriving and maliciously intending totally to hinder and deprive the said *T.* of all the profit and advantage of his said close, afterwards, to wit, the said first day of September in the 34th year of the reign of the said lord the now king, permitted the hedges and fences aforesaid separating and dividing the said close of the said *T.* called *Willowbridge*, from the said close of the said *H.* called to be broke down, prostrated and in great decay, for want of reparation, and the hedges and fences of his close aforesaid separating and dividing his close aforesaid from the common field aforesaid, called to be broke down and prostrated, and in great decay, whereby a cow of the said *T.* of the price of 5*l*. on the said first day of September in the 34th year above said, in the close of him the said *T.* called *W.* depasturing, thro' the fracture and breach of the hedges aforesaid, from the close of the said *T.* called *W.* into the close of the said *H.* called and from thence for want of reparations aforesaid of him the said *H.* into the said common field, called escaped, whereby the said *H.* afterwards, to wit, the said first day of September in the 34th year above said, the said cow of the said *T.* so in the common field aforesaid, called being found, took and then at *B.* aforesaid

[70]

Prescription to repair the fences.

The cause of action.

aforesaid impounded; which said cow so being in pound aforesaid, on the said first day of September in the 34th year above-said was there killed: Wherefore, &c.

Wickham against Sperring.

London, to wit. *W*illiam Wickham and Frances his wife administratrix of all and singular the goods and chattels, rights and credits of *James Jeoffrey* the younger deceased, son and administrator of *James Jeoffrey* the elder likewise deceased, by the said *James Jeoffrey* the younger not administered, complain of *William Sperring* in the custody of the marshal, &c. for this, to wit, that whereas the said *William* and *Frances* as administratrix of *James Jeoffrey* the elder, on the first day of September in the 35th year of the reign of the lord *Charles* the second, now king of *England*, &c. at the parish of *St. Clement Danes* in the county aforesaid, were possessed of a certain deed sealed with the seal of one *William Shalmer*, bearing date the day of in the year by which said deed the said *William Shalmer* demised to the said *James Jeoffrey* the elder in mortgage a certain windmill and sundry lands, meadow and pasture lying in *East Brent* and *Mark* in the county of *Somerset*, for the term of 1000 years, on condition for the payment of 200*l.* with interest by the said *William Shalmer* to the same *James Jeoffreys* the elder, on the day of in the year as of the deed of the said *William* and *Frances*, and to the said *William* and *Frances* as administrator to the *James Jeoffrey* the elder belonging and appertaining; and being so thereof possessed, and the said 200*l.* to the same *James Jeoffrey* the elder in his life-time, or to the said *James* the younger in his life-time, or to the said *William* and *Frances* his wife, not being paid, the same *William* and *Frances* the deed aforesaid out of their hands and possession casually lost; which said deed afterwards, and after the administration aforesaid granted to the said *Frances*, to wit, the day of in the year above-said, at the parish of *St. Clement Danes* aforesaid in the county aforesaid, came to the hands and possession of the said *William Sperring* by finding: And whereas also the said *William* and *Frances* as administratrix of the said *James Jeoffrey* the elder, on the said day of in the year above-said, at the parish of *St. Clement Danes* aforesaid in the county aforesaid, were possessed of a certain deed indented sealed with the seal of the said *William Shalmer*, bearing date the said day of in the year above-said; by which said deed last mentioned the said *William Shalmer* demised to the said *James Jeoffrey* the elder in mortgage a certain other windmill, and divers other lands, meadow and pasture lying in *East Brent* and *Mark* aforesaid in the said county of *Somerset* for 1000 years, on condition for the payment of other 200*l.* with the interest thereof by the said

Trover for a mortgage and other goods by an administrator *de bonis non*. I think the better way is to say, that the testator was possessed and lost it. *Hodsdon and Hodsdon, Latch's Reports,*

Here it is laid over again.

[71]

Laid over again
for other goods.Doth not say to
the value.These words are
not in the origi-
nal, but seem
necessary.

said *William Shalmer* to the said *James Jeoffrey* the elder, on the said day of in the year above said, as of the deed indented of the said *William* and *Frances*, and to the said *William* and *Frances* as administratrix to the said *James Jeoffrey* the elder belonging and appertaining; and being so thereof possessed, and the said 200*l.* last mentioned not being paid to the said *James Jeoffrey* the elder in his life-time, or to the said *James Jeoffrey* the younger in his life-time, or to the said *William Wickham* and *Frances*, they the same *William* and *Frances* the deed indented last mentioned out of their hands and possession casually lost; which same deed indented afterwards, and after the administration aforesaid to the said *Frances* committed, to wit, the 10th day of *September* in the year aforesaid, in the parish of *St. Clement Danes* aforesaid in the county aforesaid, to the hands and possession of the said *William Sperring* by finding came: And whereas also the said *William* and *Frances* as administratrix to the said *James Jeoffrey* the elder, afterwards, to wit, the day of in the year, above said, at the parish of *St. Clement Danes* aforesaid in the county aforesaid, were possessed of divers other goods and chattels, to wit, of 20 chairs, a silver tankard, a clock, two silver bowls, two silver salts, a caudle cup, 12 silver spoons, two gold rings, 100 pieces of gold, five feather beds and five carpets, as of the goods and chattels of the said *William* and *Frances* as administratrix to the said *James Jeoffrey* the elder; and being so thereof possessed the said *William* and *Frances* casually lost the said goods and chattels out of their hands and possession, which said goods and chattels so lost afterwards, to wit, the day of in the year above said, at the parish of *Clement Danes* aforesaid in the county aforesaid, came by finding to the hands and possession of the said *William Sperring*: Nevertheless the said *William Sperring* knowing the several deeds aforesaid to be the deeds of the said *William Wickham* and *Frances*, and to the said *William* and *Frances* as administratrix to the said *James Jeoffrey* the elder, and knowing the goods and chattels aforesaid to be the goods and chattels of the said *William Wickham* and *Frances* as administratrix to the said *James Jeoffrey* the elder, and to the said *William Wickham* and *Frances* as administratrix to the said *James Jeoffrey* the elder of right to belong and appertain, and contriving and fraudulently intending the said *William Wickham* and *Frances* of the said several deeds, and of the recovery of the money with the interest thereof by those deeds secured to be paid, and of the goods and chattels aforesaid craftily and subtilly to deceive and defraud, the said several deeds and the goods and chattels aforesaid to the said *William Wickham* and *Frances*, although often required, &c. have not yet delivered, but those several deeds and the goods and chattels aforesaid afterwards, to wit, the day of in the year above said at the parish of *St. Clement Danes* aforesaid in the county aforesaid, to his own proper use converted and disposed.

disposed, to the damage of the said *William Wickham* and *Frances* 350*l.* And therefore they produce the suit, &c.

Mitehall and Purnett.

Essex, to wit, *I* *Isaac Mitehall* late of *Colchester* in the county
aforesaid, yeoman, was attached to answer to
Thomas Purnett in a plea of trespass on the case, &c. And
whereon the said *Thomas* by *John Prichard* his attorney complains,
why whereas by a certain act made in the parliament of the
lord *Henry* the sixth, late king of *England*, &c. held at *West-*
minster in the county of *Middlesex*, on the 5th day of *February*
in the 23d year of his reign, it was among other things enacted
by the authority of the same parliament, that all sheriffs, under-
sheriffs, sheriffs clerks, stewards or bailiffs of franchises, ser-
vants of bailiffs or coroners, should let out of prison all manner
of persons by them or any of them arrested, or being in their
custody by force of any writ, bill or warrant in any action per-
sonal, or by cause of indictment by trespass, upon reasonable
sureties of sufficient persons, having sufficient within the coun-
ties where such persons be so let to bail or mainprize, to keep
their days in such place as the said writs, bills or warrants should
require, as by the statute aforesaid more fully is manifest and
doth appear: After the publication of which said act, to wit,
on the 27th day of *June* in *Trinity* term in the 35th year of the
reign of the lord *Charles* the second, late king of *England*, &c.
one *Thomas Hayes* the elder prosecuted out of the court of the
said late king of the bench here, to wit, at *Westminster*, a cer-
tain writ of the said late king of *Capias* to answer against the
said *Thomas* and other persons in the said writ named, directed
to the then sheriff of the county of *Essex*, by which said writ
the same lord the king commanded the said sheriff that he
should take the said *Thomas* and the other persons, if they should
be found in his bailiwick, and them safely should keep, so that
he might have their bodies before the justices of the said late
king of the bench at *Westminster* aforesaid, in the octave of *St.*
Martin then next following, to answer to the said *Thomas*
Hayes in a plea why with force and arms, &c. the oysters, to
wit, 80 bushels of oysters of the said *Thomas* to the value of
20*l.* at the parish of *Westminster* and *Lagenhoe* there lately found
they took and carried away, and did him other injuries, to the
great damage of the said *Thomas*, and against the peace of the
said late king; and that the same sheriff should have then
there that writ: Which said writ the said *Thomas* afterwards,
and before the return of the same, to wit, the 16th day of *Au-*
gust in the 35th year of the reign of the said late king, at *Hey-*
bridge delivered to one *William Pert*, esq; then sheriff of the
county aforesaid, in form of law to be executed; which said
sheriff for the execution of that writ afterwards, to wit, the same
16th day of *August* in the 35th year of the reign of the said late
king,

Case on the sta-
tute of 23 *H. 6.*
cap. 10. against
a bailiff for re-
fusing to take
bail on an arrest,

Capias sued out
of *C. B.*

delivered to the
sheriff.

Warrant made
by the sheriff to
the bailiff of the
hundred.

The plaintiff ar-
rested.

Bail tendered.

The bailiff re-
fused them, and
carried him to
gaol.

Case for enticing
away his servant.

king, at *Heybridge* aforesaid, made his certain warrant in writ-
ing sealed with the seal of his office of sheriff of the county
aforesaid, directed to the then bailiffs of the hundreds of *Lexon*,
Tendrin, *Winstree* and *Thurstalle*; by which said warrant the same
sheriff commanded the bailiffs of the hundreds aforesaid, that they
should take the same *Thomas* and the other persons aforesaid, if,
&c. and them safely, &c. so that they might have their bodies
before the said justices of the said late king of the bench aforesaid,
at *Westminster* aforesaid, to answer in form aforesaid:
Which said warrant afterwards, and before the return of the
same, to wit, the last day of *August* in the 35th year aboveaid,
at *Heybridge* aforesaid, to the said *Isaac* then and at the time of
the making the said warrant, and continually from thence until
the return of the said writ, being bailiff of the said hundred of
Winstree aforesaid, was delivered in form of law to be executed,
by virtue of which said warrant the said *Isaac*, being bailiff of
the said hundred of *Winstree* as is aforesaid, afterwards, and
before the return of the said writ, to wit, the first day of *September*
in the 35th year of the reign of the said late king above-
said, at *Heybridge* aforesaid, took and arrested the said *Thomas*:
And the said *Thomas* in fact says, that immediately after the tak-
ing and arresting of the said *Thomas*, he the said *Thomas* offer-
ed to the said *Isaac* reasonable sureties of sufficient persons, to
wit, *John Doe* of, &c. in the county aforesaid, gent. and *Rich-
ard Jones* of, &c. in the county aforesaid, gent. then and there
being sufficient persons, and having and each of them then hav-
ing sufficient within the county aforesaid, for his appearance, ac-
cording to the command of the said writ, according to the form
of the statute aforesaid: Nevertheless the said *Isaac* not con-
sidering the said statute, but contriving and maliciously intending
unjustly to aggrieve and oppress the said *Thomas* in this behalf,
absolutely refused to accept his said sureties, and immediately
carried him the said *Thomas* to the common gaol of the said late
king for the county aforesaid at *Chelmsford*, and there detained
him in the said gaol a prisoner under the custody of the said
William Pert then sheriff of the same county, until he paid to
the same *Isaac* a fine of 40s. against the form of the statute
aforesaid; whereby he says that he is prejudiced, and has damage
to the value of 40l. And therefore he produces the suit, &c.

F. W. complains of *T. G.* in custody of the marshal, &c.
for this, to wit, that whereas one *A. B.* on the first day,
&c. at &c. was rightfully and lawfully retained and placed in
the service of the said plaintiff to transact certain affairs of the
said plaintiff, unto the end of one year then next following and
fully to be compleat and ended; and the same *A. B.* had served
for the space of six months next after the first day of *May* in the
year, &c. aboveaid in the service of the said plaintiff, whereby
the same plaintiff obtained and acquired divers great profits and
advantages from the labour and service of the said *A. B.* his ser-
vant:

Want: Nevertheless the defendant not ignorant of the premisses, but contriving craftily and subtilly to deceive and defraud the said plaintiff of his servant aforesaid, and retained in his service as a hired servant, and of all the profits, benefits and advantages, which the said plaintiff by reason of his servant aforesaid might have and gain, procured the said *A. B.* to depart from and leave the service of the said plaintiff against the will of the said plaintiff, whereby the said plaintiff intirely lost the service of the said *A. B.* his servant for a long time, to wit, for the space of to the damage of the said plaintiff 50*l.* And therefore he produces the suit, &c.

Andrews and another and Lee.

North'ton, to wit. *John Andrews* the elder late of *Liwarne* in the county aforesaid, yeoman, and *John Andrews* the younger late of *Liwarne* aforesaid, yeoman, were attached to answer to *William Lee*, gent. in a plea of trespass on the case, &c. And whereon the said *William* by *John Underwood* his attorney complains, that whereas the said *William* on the first day of *May* in the eighth year of the reign of the lord *William* the third, now king of *England*, &c. and continually afterwards unto the 10th day of *May* in the 8th year of the reign of the said lord *William* the third, now king of *England*, &c. was seised in his demean as of fee of and in a close of pasture, called *The Convenience* in *Liwarne* aforesaid in the county of *Northampton* aforesaid, and that the said *William* on the said first day of *May*, and continually afterwards until the said tenth day of *May*, had and ought to have for himself and his servants at all times in the year, at their will, as well a foot-way as a horse-way in, upon and thro' and beyond a certain close, called *The Butlees* in *Liwarne* aforesaid, from a certain highway in *Liwarne* aforesaid, called *Liwarne Street*, to the said close of him the said *William*, called *The Convenience*, and so back again to drive and drive back the cattle of the said *William*, and to carry and carry back with his carts and carriages as to the said close belonging and appertaining: Nevertheless the said *John* and *John* contriving and intending unjustly to disturb the said *William*, and to hinder and deprive him of his way aforesaid, on the said first day of *May* in the 8th year aforesaid, at *Liwarne* aforesaid in the county of *Northampton* aforesaid, a certain ditch and hedge a-crofs the way of him the said *William* in the close aforesaid, called *The Butlees*, to the close of him the said *William*, called *The Convenience*, dug, made and continued, and also the said way there did so much obstruct and stop, that the said *William* was totally hindered and deprived of his way aforesaid in form aforesaid to be had, from the said first day of *May* to the said 10th day of *May* in the 8th year aforesaid, to the damage of the said *William* 20*l.* And therefore he produces the suit, &c.

Case for stoppage a way to the plaintiff's close.

The plaintiff seised in fee.

Had and ought to have a way is good in a possessory action. So also in case the defendant is a stranger, and

[73]

stops up my close; but if the defendant stops up my way in his own close, then I must prescribe for the way. So note a diversity where the defendant a stranger, and where owner of the ground.

1 Ventr. 274.
2 Ventr. 115,
186, 187.

Man and another against Oades.

Case by an indorsee against the drawer of a promissory note.

3 & 4 A. c. 9.

Not in the original.

I promise to pay to Mr. Richard Fowke or order 100*l.* upon the 1st day of Octob. 1718. Witness my hand, James Oades. Indoried thus, R. Fowke. Indoried again, Will. Barcock.

London, to wit. *J*ames Oades late of London, notary, was attached to answer to Robert Man and William Day in a plea of trespass on the case, &c. And whereon the same Robert Man and William Day by G. R. their attorney complain, why whereas the said James after the 1st day of May in the year of our Lord 1705, to wit, the 11th day of June in the year of the Lord 1708, at London aforesaid in the parish of St. Mary-le-bow in the ward of Cheape, made his certain note in writing with his own proper hand thereto subscribed, called a promissory note, bearing date the same day and year last aforesaid, and thereby promised to pay to one Mr. Richard Fowke or order 100*l.* on the 1st day of October then next following for like value received, and the said 100*l.* being unpaid, he the said Richard afterwards, to wit, the same day and year last aforesaid, at London aforesaid in the parish and ward aforesaid, indoried that note with his own proper hand thereto subscribed, and thereby appointed the contents of the same note to be paid to one William Barcock or his order, value received, and the said 100*l.* not being paid, he the said William Barcock afterwards, to wit, the same day and year last aforesaid, at London aforesaid in the parish and ward aforesaid, indoried the said note with his own proper hand thereto subscribed, and thereby appointed the contents of the same note to be paid to the said Robert Man and William Day or their order, for value received, whereof the said James Oades afterwards, to wit, the same day and year, at London aforesaid in the parish and ward aforesaid, had notice: And by reason of the premisses, and by force of the statute in such case lately made and provided, the same James was and became liable to pay to the said Robert Man and William Day the same sum of money according to the tenor of the note aforesaid; and so being thereto liable the said James afterwards, to wit, the same day and year aforesaid, at London aforesaid in the parish and ward aforesaid, in consideration thereof assumed upon himself, and to the same Robert Man and William Day then and there faithfully promised, to pay them the same sum of money according to the tenor of the note aforesaid: Nevertheless the said James his promise and assumption aforesaid not regarding, but contriving and fraudulently intending the said Robert Man and William Day in this behalf craftily and subtilly to deceive and defraud, the said 100*l.* or any penny thereof, to the same Robert Man and William Day, or either of them, hath not yet paid, (although to do it he was required by the said Robert Man and William Day afterwards, to wit, the 1st day of October in the 7th year of the reign of the lady the now queen, and often after, at London aforesaid in the parish and ward aforesaid), but hath hitherto altogether denied and yet doth deny to pay them the

the same, to the damage of them the said *Robert Man* and *William Day* 1301. And therefore they produce the suit, &c.

Balfworth against *Pilkington*.

Surrey, to wit. *Thomas Pilkington* late of *Southwark* in the county of *Surry*, esq; was attached to answer to *Edward Balfworth* in a plea of trespass on the case, &c. and whereon the same *Edward* by *Thomas Rous* his attorney complains, why whereas the said *Edward* is a good, true and faithful subject of the lord the now king, and now and for divers years now last past hath used and yet doth exercise the art or mystery of a perfumer, and as a faithful buyer and seller in the same art in bargaining, buying and selling therein, hath alway behaved himself, and as a good, true and faithful subject of the said lord the king from the time of his birth hitherto hath carried himself, and of a good name, fame and reputation among very many of the liege subjects of the said lord the king for all the time aforesaid was had, said, held and reputed to be, and for many years now past within this kingdom of *England*, with very many subjects of the said king, the art or mystery of a perfumer by way of merchandizing, selling and lawfully bargaining, hath exercised and used, and yet doth use and exercise, and for all the said time his credit and promises in all transactions and affairs relating to the said art and mystery, as also true and faithful payment of his debts at all times without any mark of falsity, deceit or breaking, hath kept, performed and fulfilled, and by that means acquired and enjoyed great credit and the good opinion of sundry subjects of the said lord the king, and hath likewise daily honestly gained and obtained a maintenance and support for his family: Nevertheless the said *Thomas* not ignorant of the premises, but maliciously and wickedly intending the name, fame, estate and reputation of the said *Edward* to draw in question, lessen and blacken, and to bring on him the said *Edward* the mistrust of the subjects of the lord the king, and to draw him into scandal and infamy, so that the said subjects of the said lord the king should desist from bargaining, negotiating, or any way dealing with the said *Edward*, and should repute and esteem him a bankrupt, on the 7th day of *January* in the 33d year of the reign of our lord *Charles* the second, now king of *England*, &c. at *Southwark* in the county of *Surry* aforesaid, these false, feigned, scandalous and opprobrious words following of the same *Edward*, in the presence and hearing of several faithful subjects of the said lord the now king, falsely and maliciously spoke, related, uttered, published, and with a loud voice pronounced, to wit, You (meaning the said *Edward*) are a pitiful broken fellow, and are not able to pay your debts (meaning the debts of the said *Edward*): And whereas also the same *Thomas* afterwards, to wit, the day, year and place aforesaid, out of his farther malice and envy against him the said *Edward* before had and conceived, these

Case for words,
You are a broken
fellow, and can-
not pay your
debts. Parl.
Rep. 12. Pra 2.
Reg. 706 to 711.

[74]
That the plain-
tiff was a trades-
man, and had
paid all his
debts.

To bring him
into the danger
of being account-
ed a bankrupt.

The words.

The second
words.

The third
words.

In this case the
plaintiff recover-
ed a verdict for
800*l.* upon
which a writ of
error was brought
in parliament,
and judgment
affirmed.

these other false, feigned, scandalous and opprobrious words fol-
lowing of the said *Edward*, and to the said *Edward*, in the pre-
sence and hearing of several other subjects of the said lord the
now king, falsely and maliciously spoke, related, uttered, pub-
lished, and with a loud voice pronounced, to wit, You (meaning
the said *Edward*) are a pitiful broken fellow, go home and pay
your debts (meaning the debts of the said *Edward*): And
whereas also the said *Thomas* afterwards, to wit, the day, year
and place abovesaid, out of his farther malice and envy against
the said *Thomas* before had and conceived, these other false,
feigned, scandalous and opprobrious words following of the said
Edward, and to the said *Edward*, in the presence and hearing
of several other subjects of the said lord the now king, did speak,
relate, utter, publish, and with a loud voice pronounce, to wit,
You (meaning the said *Edward*) are a pitiful broken fellow, and
cannot pay your debts (meaning the debts of the said *Edward*);
by reason of the speaking and publishing of which said false,
feigned, scandalous and opprobrious words, the said *Edward* is
not only greatly impaired and prejudiced in his good name, re-
putation and credit, but also is very much hurt and prejudiced in
transacting his business with those persons with whom he used
formerly to trade in buying, selling and lawfully merchandizing,
and on that account several subjects of the said lord the king have
absolutely refused and do refuse to trade or have any dealings
with the said *Edward*; whereby he says he is prejudiced, and
hath damage to the value of 1000*l.* And therefore he produces
the suit, &c.

Clark, one, &c. and Chauncey.

Mich. 31 Car. 2. in C. B.

Case on the sta-
tute of *Magna*
Charta, cap. 29.
that no freeman
shall be taken or
imprisoned with-
out lawful judg-
ment of his
peers.

London, to wit. *Henry Chauncey*, esq; *W. S. &c.* were at-
tached by writ of the said lord the king of
privilege issuing out of the court here to answer to *Nicholas Clarke*,
gent. one of the attornies of the court of the lord the king of
the bench, according to the liberty and privilege of the same
court for such attornies and other ministers of the same bench
from time immemorial used and approved in the same, in a plea
why whereas by the statute of *Magna Charta* among other things
it is contained, That no freeman shall be taken or imprisoned, or
be disseised of his freehold, or liberties or free customs, or out-
lawed or exiled, or any otherwise destroyed, nor we will not
pass upon him nor condemn him but by lawful judgment of his
peers, or by the law of the land, as by the same statute more
fully appears: And whereas the same *Nicholas* is and from the
time of his birth hitherto was a freeman of this kingdom of *Eng-*
land, and ought, according to the law and free custom of *Eng-*
land, to have and enjoy the liberties and free customs of this
kingdom of *England*; they the said *Henry Chauncey*, *W. S. &c.*

not

not ignorant of the premisses, the same statute not regarding, but contriving to disinherit the said *Nicholas* of the liberties and free customs aforesaid, against the form of the statute aforesaid, with force and arms at *London* aforesaid in the parish of *St. Mary, &c.* made an assault upon the said *Nicholas*, and beat, wounded, took, imprisoned and abused him, and him the said *Nicholas* so in prison detained, without any reasonable cause, contrary to the law and custom of this realm of *England*, against the will of the said *Nicholas*, until the said *Nicholas* found manucaptors that he should appear at the next assises and general gaol-delivery to be held for the county of *Hertford*, and in the mean time should be of good behaviour, and offer'd him other injuries, to the great damage of the said *Nicholas*, and against the peace of the lord the now king, &c. And whereupon the said *Nicholas* in his proper person complains, why whereas by the statute of *Magna Charta* among other things it is contained, that no freeman shall be taken or imprisoned, or be disseised of his freehold or liberties, or free customs, or outlawed or exiled, or any otherwise destroyed, nor we will not pass upon him nor condemn him but by lawful judgment of his peers, or by the law of the land, as by the same statute more fully appears: And whereas the same *Nicholas* is and from the time of his birth hitherto was a freeman of this kingdom of *England*, and ought according to the law and free custom of *England* to have and enjoy the liberties and free customs of this kingdom of *England*; they the same *Henry Chauncy, W. S. &c.* not ignorant of the premisses, the same statute not regarding, but contriving to disinherit the said *Nicholas* of the liberties and free customs aforesaid, against the form of the statute aforesaid, on the 29th day of *September* in the 31st year of the reign of the lord *Charles* the second, &c. with force and arms, to wit, swords, staffs and knives, at *London* aforesaid, &c. made an assault upon him the said *Nicholas*, and beat, wounded, took, imprisoned and abused him, and him the said *Nicholas* so in prison detained, without any reasonable cause, contrary to the law and customs of this kingdom of *England*, against the will of the said *Nicholas* for a long time, to wit, for the space of two hours, until he the said *Nicholas* found certain manucaptors that he should appear at the next assises and general gaol-delivery to be held for the county of *Hertford*, and in the mean time should be of good behaviour, against the peace of the lord the king and the customs of this kingdom of *England*, and other injuries, &c. to the great damage, &c. By reason whereof the said *Nicholas* is greatly disquieted and disturbed, and of the liberties and free customs aforesaid was disinherited, against the form of the statute aforesaid, and is very much hindered in his business as an attorney; whereby he says that he is prejudiced, and has damage to the value of 500*l.* And therefore he produces the suit, &c.

Plead Not guilty, and give in evidence the fact was done in Hertfordshire.

Edm. Saunders.

[75] -

The defendants assaulted and imprisoned him till he found bail to appear at the next assises.

The count on the writ.

Medlicott

Medlicott against Maunson.

Declⁿ on 2 & 3
E. 6. c. 13. for
not setting forth
tithes of coppice
wood under the
growth of 21
years. Pasch.
33 Car. 2.

The recital of
the statute.

The forfeiture.

The plaintiff
farmer of the
tithes in part
of the parish.

[76]

Hertford, to wit. *J. M.* late of *Broxborne* in the county afore-
said, knight of the *Bath* and bart. was
summoned to answer to *Thomas Medlicott* in a plea that he render
unto him 144*l.* which he owes him and unjustly detains, &c.
And whereon the said *Thomas Medlicott* by *Charles Nicholls* his
attorney says, that whereas by a certain act made in the parlia-
ment of the lord *Edward* the sixth, held at *Westminster* in the
county of *Middlesex* the fourth day of *November* in the second
year of his reign, it was among other things enacted by the
authority of the same parliament, that every of the king's subjects
should from thenceforth truly and justly without fraud or guile
divide, set out, yield and pay all manner of their predial tithes in
their proper kind, as they rise and happen, in such manner and
form as had been of right yielded and paid within forty years
next before the making of that act, or of right or custom ought
to have been paid; and that no person should from thenceforth
take or carry away any such or like tithes which had been yielded
or paid within the said 40 years, or of right ought to have been
paid, in the place or places tithable of the same, before he had
justly divided or set forth for the tithe thereof the 10th part of the
same, or otherwise agreed for the same tithes with the parson,
vicar, or other owner, proprietary or farmer of the same tithes,
under the pain of forfeiture of treble value of the tithes so taken
or carried away, as by the same act, among other things, more
fully appears: And whereas also the said *Thomas* after the mak-
ing of the said act, to wit, on the first day of *January* in the 28th
year of the reign of the lord the now king, and long before, and
from thence ever after hitherto was and yet is farmer of all and
singular the tithes of grain, wood and hay yearly growing or
renewing in and upon any of the lands, meadows and woods be-
longing to the rectory of *Cheshunt* in the county of *Hertford*, ly-
ing and being within the ward, commonly called or known by
the name of *Waltham Cross Ward*, and to part of the ward,
commonly called or known by the name of *Woodside Ward* in the
parish of *Cheshunt*, which part of the ward aforesaid extends from
Brookside to *Cheshunt Church-gate*, and by the highway to a place
called *Flamstead End*, and so from *Flamstead End* from thence
by *Cheshunt Park-lane* to a place called *Hollow Cross*, which said
part of the ward last mentioned lies towards the west on the
several ways, lands and places last mentioned: And whereas
also the said *John Maunson* being a subject of the lord the now
king, and a freeman of *England*, on the first day of *April* in the
29th year of the reign of the said lord the now king, was and
ever since has been and yet is occupier of 2000 acres of wood-
land, commonly called *Cheshunt Common*, with the appurtenances,
belonging to the rectory of *Cheshunt*, and lying within the said
ward of *Waltham Cross*, and the said part of the ward of *Woodside
Ward* in the parish of *Cheshunt* aforesaid; of which said 2000
acres

acres of wood-land, the tithes of the wood and underwood, lops and tops of the said woods, being coppice-wood under the growth of 20 years in and upon the same 2000 acres of wood-land, with the appurtenances, respectively growing, coming, renewing, happening and arising within 40 years next before the making of the act aforesaid, of right ought and were accustomed to be paid in their proper kinds and species by the occupier or occupiers of the same for the time being to the rector of *Cheshunt* aforesaid, or to his farmer or deputy, or other proprietor of that rectory or of the tithes thereof for the time-being: And the said *John* being so as aforesaid occupier of the said 2000 acres of wood-land, and the said *Thomas* being so as aforesaid farmer of the tithes aforesaid in form aforesaid, the said *John* afterwards, to wit, on the third day of *January* in the 29th year of the reign of the said lord the now king aforesaid, cut down, lopt and topt the wood and underwood then growing in and upon 200 acres of land, parcel of the said 2000 acres of wood-land, being coppice-wood and under the growth of 20 years, the tithes of which said wood and underwood, lops and tops aforesaid, in and upon the said 200 acres, parcel of the said 2000 acres of wood-land, in the same year respectively as aforesaid growing, renewing and coming, did belong and of right ought to be yielded and paid to the same *Thomas*, being as aforesaid farmer of the said tithes: Nevertheless the said *John* all the wood and underwood aforesaid, and the lops and tops of the wood aforesaid, in and upon the said 200 acres, parcel of the said 2000 acres of wood-land, in the same year growing, renewing and coming, being as aforesaid coppice-wood, and under the growth of 20 years, after the said cutting down, lopping and topping of the said wood and underwood aforesaid, to wit, on the said third day of *January* in the 29th year of the reign of the said lord the now king aforesaid, without any division, throwing out or setting forth for the tithe thereof the tenth part of the same wood, underwood, lops and tops aforesaid, and without any agreement made for the same tithes by the said *John* with the said *Thomas*, at *Cheshunt* aforesaid took and carried away: And whereas also the said *John* afterwards, to wit, on the first day of *April* in the 30th year of the reign of the said lord the now king, the same *John* being then, as is aforesaid, the occupier of the said 2000 acres of wood-land, commonly called *Cheshunt Common*, with the appurtenances, belonging to the rectory of *Cheshunt*, and lying within the said ward of *Walsham Cross*, and the said part of the ward of *Woodside Ward* in the parish of *Cheshunt* aforesaid, of which said 2000 acres of wood-land, the tithes of the wood and underwood, lops and tops of the wood aforesaid, being coppice-wood, and under the growth of 20 years, in and upon the same 2000 acres of wood-land, with the appurtenances, respectively growing, coming, renewing, happening and arising within 40 years next before the making of the said act, of right ought and were accustomed to be paid in their proper kinds and species by the occupier or occupiers of

Coppice-wood.

The cause of action.

Did not set forth his tithe, or make any agreement.

Second count.

Lops and tops.

Did not pay
tithes.

[77]

Third count.

Coppice-wood
20 years growth.

the same for the time being to the rector of *Chefhunt* aforefaid, or to his farmer or deputy, or other proprietor of that rectory or of the tithes thereof for the time being; and the faid *John* fo aforefaid being occupier of the faid 2000 acres of wood-land, with the appurtenances, and the faid *Thomas* being fo as aforefaid farmer of the faid tithes in form aforefaid, the faid *John* afterwards, to wit, on the third day of *January* in the 30th year of the reign of the faid lord the now king, the wood and underwood in and upon other 200 acres of land, parcel of the faid 2000 acres of wood-land then growing, being coppice-wood, and under the growth of 20 years, did cut down, lop and top, the tithes of which faid wood and underwood, lops and tops aforefaid, in and upon the faid other 200 acres of land, parcel of the faid 2000 acres of wood-land, in the same year respectively as aforefaid growing, renewing and coming, did belong and of right ought to be paid and yielded to the same *Thomas*, being as aforefaid farmer of the faid tithes. Nevertheless the faid *John* all the wood and underwood aforefaid, and the lops and tops of the wood aforefaid in and upon the faid other 200 acres, parcel of the faid 2000 acres of wood-land, in the same year growing, renewing and coming, being as aforefaid coppice-wood, and under the growth of twenty-years, after the faid cutting down, lopping and topping of the wood and underwood aforefaid, to wit, on the faid third day of *January* in the thirtieth year of the reign of the faid lord the now king abovefaid, without any division, throwing out or setting forth for the tithes thereof the tenth part of the same wood, underwood, lops and tops aforefaid, and without any agreement made for the same tithe by the faid *John* with the faid *Thomas*, at *Chefhunt* aforefaid took and carried away: And whereas also the faid *John* afterwards, to wit, on the 1st day of *April* in the 31st year of the reign of the faid lord the now king, the same *John* then being as aforefaid occupier of the faid 2000 acres of wood-land, commonly called *Chefhunt Common*, with the appurtenances belonging to the rectory of *Chefhunt*, and lying within the faid ward of *Waltham Crofs*, and the faid part of the ward of *Woodside Ward* in the parish of *Chefhunt* aforefaid, the tithes of which faid wood and underwood, lops and tops of the faid wood being coppice-wood and under the growth of twenty years in and upon the faid 2000 acres of wood-land with the appurtenances respectively growing, coming, renewing, happening and arising within 40 years next before the making of the faid act, of right ought and were accustomed to be paid in their proper kinds and species by the occupier or occupiers of the same for the time being to the rector of *Chefhunt* aforefaid, or to his farmer or deputy, or other proprietor of that rectory or of the tithes thereof for the time being; and the faid *Thomas* being fo as aforefaid farmer of the faid tithes in form aforefaid, the faid *John* afterwards, to wit, on the 3d day of *January* in the 31st year of the reign of the faid lord the now king abovefaid, the wood and underwood in and upon other 200 acres of land, parcel of the faid 2000 acres of

of wood-land then growing, being coppice-wood and under the growth of 20 years, did cut down, lop and top, the tithes of which said wood and underwood, lops and tops aforesaid; in and upon the said other 200 acres, parcel of the said 2000 acres of woodland in the same year respectively growing, renewing, and coming as aforesaid, did belong and of right ought to be paid and yielded to the said *Thomas*, being as is aforesaid farmer of the said tithes: Nevertheless the said *John* all the wood and underwood aforesaid, and the lops and tops of the said wood in and upon the said other 200 acres, parcel of the said 2000 acres of wood-land in the same year growing, renewing and coming, being as aforesaid coppice-wood and under the growth of 20 years, after the said cutting down, lopping and topping of the wood and underwood aforesaid, to wit, on the said 3d day of *January* in the 31st year of the reign of the said lord the now king aforesaid, without any division, showing out or setting forth for the tithe thereof the tenth part of the said wood and underwood, lops and tops aforesaid, and without any agreement made for the same tithe by the said *John* with the said *Thomas*, at *Cheshunt* aforesaid took and carried away: And whereas also the said *John* afterwards, to wit, on the 1st day of *April* in the 32d year of the reign of the said lord the now king, the said *John* being then so as aforesaid occupier of the said 2000 acres of wood-land, commonly called *Cheshunt Common*, with the appurtenances, belonging to the rectory of *Cheshunt*, and lying within the said ward of *Waltham Cross*, and the said part of the ward of *Woodside Ward* in the parish of *Cheshunt* aforesaid, of which said 2000 acres of wood-land the tithes of the wood and underwood, the lops and tops of the wood aforesaid being coppice-wood and under the growth of 20 years, in and upon the same 2000 acres of wood-land, with the appurtenances respectively growing, coming, happening and arising within forty years next before the making of the said act, of right ought and were accustomed to be paid in their proper kinds and species by the occupier or occupiers of the same for the time being to the rector of *Cheshunt* aforesaid, or to his farmer or deputy, or other proprietor of that rectory or of the tithes thereof for the time being; and the said *John* being so as aforesaid occupier of the said 2000 acres of wood-land with the appurtenances, and the said *Thomas* being so as aforesaid farmer of the said tithes in form aforesaid, the said *John* afterwards, to wit, on the third day of *January* in the thirty-second year of the reign of the said lord the now king aforesaid, the wood and underwood in and upon other 200 acres of land, parcel of the said 2000 acres of wood-land then growing, being coppice-wood and under the growth of twenty years, did cut down, lop and top, the tithes of which said wood and underwood, lops and tops aforesaid in and upon the said other 200 acres, parcel of the said 2000 acres of wood-land in the same year respectively as aforesaid growing, renewing and coming, did belong and of right ought to be paid and yielded to the said *Thomas*, being as is aforesaid

Fourth count:

Lops and tops
of coppice-
wood.

The cause of
action.

[78]
Fifth count.

Lops and tops
of coppice-
wood.

The cause of
action.

farmer of the said tithes: Nevertheless the said *John* all the wood and underwood aforesaid, the lops and tops of the said wood in and upon the said 200 acres of land, parcel of the said 2000 acres of wood-land in the same year growing, renewing and coming, being as aforesaid coppice-wood and under the growth of twenty years, after the said cutting down, lopping and topping of the wood and underwood aforesaid, to wit, the said third day of *January* in the thirty-second year of the reign of the said lord the now king aforesaid, without any division, throwing out or setting forth for the tithe thereof the tenth part of the said wood, under-wood, lops and tops aforesaid, and without any agreement made by the said *John* with the said *Thomas* for the same tithe, at *Cheshunt* aforesaid did take and carry away: And whereas also the said *John* afterwards, to wit, on the first day of *April* in the 33d year of the reign of the said lord the now king, the same *John* then being so as aforesaid occupier of the said 2000 acres of wood-land, commonly called *Cheshunt Common*, with the appurtenances, belonging to the rectory of *Cheshunt* aforesaid, and lying in the ward of *Waltham Cross*, and the said part of the ward of *Walside Ward* in the parish of *Cheshunt* aforesaid, of which said 2000 acres of wood-land the tithes of the wood and underwood, the lops and tops of the wood aforesaid being coppice-wood and under the growth of 20 years in the same 2000 acres of wood-land with the appurtenances respectively growing, coming, renewing, happening and arising within 40 years next before the making of the said act, of right ought to be and were accustomed to be paid in their proper kinds and species by the occupier or occupiers of the same for the time being to the rector of *Cheshunt* aforesaid, or to his farmer or deputy, or other proprietor of that rectory or of the tithes thereof for the time being; and the said *John* being so as aforesaid occupier of the said 2000 acres of wood-land, with the appurtenances, and the said *Thomas* being so as aforesaid farmer of the said tithes in form aforesaid, the said *John* afterwards, to wit, the 3d day of *January* in the 33d year of the reign of the said lord the now king, did cut down, lop and top the wood and underwood in and upon other 200 acres of land parcel of the said 2000 acres of wood-land then growing, being coppice-wood and under the growth of 20 years, the tithe of which said wood and underwood, lops and tops aforesaid in and upon the said other 200 acres, parcel of the said 2000 acres of wood-land in the same year respectively as is aforesaid growing, renewing and coming did belong and of right ought to be paid and yielded to the said *Thomas*, being as aforesaid farmer of the said tithes: Nevertheless the said *John* after the said cutting down, lopping and topping of the wood and underwood aforesaid, to wit, on the said 3d day of *January* in the 33d year of the reign of the said lord the now king aforesaid, at *Cheshunt* aforesaid, did take and carry away all the wood and underwood aforesaid, and the lops

and tops of the said wood in and upon the said other 200 acres of land, parcel of the said 2000 acres of wood-land in the same year growing, renewing and coming, being as aforesaid cop-
 pice-wood and under the growth of 20 years, without any divi-
 sion, throwing out or setting forth for the tithe thereof the
 tenth part of the same wood and underwood, lops and tops
 aforesaid, and without any agreement made for the same tithe
 by the said *John* with the said *Thomas*, against the form of the
 statute aforesaid: And the same *Thomas* in fact says, that the
 tithes of the wood and under-wood, lops and tops of the wood
 aforesaid, in the 29th year of the reign of the said lord the
 now king above said, so as aforesaid not divided, thrown out or
 set forth, and by the said *John* taken and carried away, at the
 said time of the taking and carrying away of the same were
 worth 10*l.* of lawful money of *England*; and the tithes of the wood
 and underwood, lops and tops of the wood aforesaid, in the 30th
 year of the reign of the said lord the now king above said, so
 as aforesaid not divided, thrown out or set forth, and by the said
John taken and carried away, at the said time of the taking
 and carrying away of the same were worth 10*l.* of like money
 of *England*; and that the tithes of the wood, underwood, and
 lops and tops of the wood aforesaid, in the 31st year of the
 reign of the said lord the now king above said, so as aforesaid
 not divided, thrown out or set forth, and by the said *John* taken
 and carried away, at the said time of the taking and carrying
 away of the same were worth 10*l.* of like lawful money of
England; and also that the tithes of the wood and underwood,
 lops and tops of the wood aforesaid, in the 32d year of the
 reign of the said lord the now king above said, so as aforesaid not
 divided, thrown out or set forth, and by the said *John* taken
 and carried away, at the said time of the taking and carrying
 away of the same were worth 9*l.* of like lawful money of
England; and that the tithes of the wood and underwood, lops
 and tops of the wood aforesaid, in the 33d year of the reign of
 the said lord the now king above said, so as aforesaid not divid-
 ed, thrown out or set forth, and by the said *John* taken and
 carried away, at the said time of the taking and carrying away
 of the same were worth 9*l.* of like lawful money of *England*;
 which said several sums of money in the whole amount to 48*l.*
 whereby and by virtue of the statute aforesaid an action ac-
 crued to the said *Thomas* to demand and have of the said *John*
 the said 144*l.* to wit, the treble value of the tithes of the
 wood, underwood, lops and tops of the wood aforesaid by the
 said *John* in the said several five years in form aforesaid taken
 and carried away: Nevertheless the said *John*, although often
 required, the said 144*l.* to the same *Thomas* hath not yet ren-
 dered, but hath hitherto denied and yet doth deny to render
 him the same; whereby he says that he is prejudiced, and hath
 damage to the value of 10*l.* And therefore he produces the
 writ, &c.

The value of the
 tithes.

*Dummer against Fitch.**Mich. II W. 3. Roll 333.*

Declaration for
words spoken of
a surveyor of the
navy.

Letters patent,

The salary.

De'endant em-
ployed in buil-
ding a dry dock.

Midd', to wit. **E**dward Dummer, esq; complains of *John Fitch* in the custody of the marshal, &c. for this, to wit, that whereas the said *Edward* is a good, true, very faithful, upright, honest and sincere liege and subject of the lord the now king and of the lady *Mary* late queen of *England* deceased, as also of the said lord the now king after the demise of the said queen, and was of a good name, reputation, conversation and condition, and was reputed and esteemed as such, not only among his neighbours and other faithful subjects of the said lord the king and of the said late lady the queen, but also of the said lord the now king after the demise of the said lady the queen: And whereas also the said lord *William* the third, now king of *England*, and the said lady *Mary* the second, late queen of *England*, by their letters patent under the great seal of *England*, bearing date at *Westminster* the 9th day of *August* in the fourth year of their reign, constituted and appointed him the said *E. D.* surveyor of the fleet and navy of the said lord and lady the king and queen in the place of one *J. T.* knt. then deceased, and gave and granted full power and authority to him the said *E. D.* by himself, or his sufficient deputy or deputies, to perform and execute the duty belonging to the said surveyor of their fleet and navy during their pleasure; and farther gave and granted to the same *E. D.* for the execution of the office of the said place or employment aforesaid, and during his continuance in the same, the yearly salary or allowance of 500 *l.* of lawful money of *England*, together with such a number of clerks, and with such salaries and allowances for them, as were or should be allowed by the high admiral or commissioner of the same king and queen, for the execution of the office of high admiral for the time being; in which said office to the same *E. D.* as aforesaid granted, he faithfully, skillfully, diligently and truly, during his continuance in that office, did serve and did behave himself well and faithfully in the same, and by reason thereof the said *E. D.* in his said office from the time of the grant of the same until to and after the time of the speaking and publishing of the false, feigned and scandalous words hereafter specified, continued and was, and that office, together with the salary, profits, privileges, emoluments and advantages thereto belonging for his maintenance and support, lawfully and honestly enjoyed: Nevertheless the said *J.* who during the time that the said *E. D.* continued in the said office, and before the speaking of the false words hereafter specified, worked at, and in certain works in and about the building of a certain dry dock, to wit, at *P.* in the county of *S.* by the said *J.* to be done and performed for the said lord the now king, of which works he the said *E. D.* by virtue of his office aforesaid was surveyor

veyor, not ignorant of the premisses, but greatly envying the happy estate of the said *E. D.* and contriving and maliciously intending unjustly to aggrieve the said *E. D.* and his good name and reputation to hurt and detract, and to bring him the said *E. D.* into the ill opinion of the said lord the now king, and into scandal, ignominy and disgrace among all the faithful subjects of the said lord the now king, to whom the said *E. D.* was known, and to cause him to be deprived and removed of and from his office aforesaid, and him in his estate and means of livelihood to impoverish and intirely destroy and ruin, lately and while the said *E. D.* held, occupied and enjoyed the said office of surveyor of the fleet and navy of the said lord the now king, to wit, on the 10th day of *November* in the 10th year of the reign of the lord *William* the third, now king of *England, &c.* at *Westminster* in the county aforesaid, certain false, feigned and scandalous words of the same *E. D.* in the presence and hearing of very many liege subjects of the said lord the now king, openly and publicly spoke, uttered and published in these *English* words following, to wit, I (meaning him the said *J.*) have given Mr. *D.* (meaning the said *Edward*) at several times 800*l.* as bribes, and I (meaning him the said *J.*) will prove the said sums were given him (again meaning the said *E.*) and the times when; I (again meaning him the said *J.*) have overcome the king, and now I (again meaning him the said *J.*) will fall upon that rascal *D.* (meaning the said *Edward*) and get my 800*l.* again: And the same *J.* of his farther malice and envy had against the said *E.* afterwards, to wit, the same day, year and place last mentioned, speaking of the same *E.* and of his actions in his office aforesaid, these other false, feigned and scandalous words of the same *E.* in the presence and hearing of very many other faithful subjects of the said lord the now king, openly and publicly spoke, asserted, related, uttered and published in these *English* words following, to wit, I (meaning him the said *J.*) have given Mr. *D.* (meaning him the said *E.*) six hundred pounds as a bribe: And the same *J.* of his farther malice and envy had against him the said *E.* afterwards, to wit, the same day, year and place last mentioned, speaking of the same *E.* and of his actions in his office aforesaid, these other false, feigned and scandalous words following, in the presence and hearing of very many other faithful subjects of the said lord the now king openly and publicly spoke, asserted, related, uttered and published in these *English* words following, to wit, I (meaning him the said *J.*) have given Mr. *Dummer* (meaning the said *E.*) money at several times as bribes, and I (meaning him the said *J.*) will prove the sums and times when; by reason of the speaking, uttering and publishing of which said false and scandalous words, he the said *E.* is not only greatly hurt in his good name, credit and reputation, but also the same *E.* by reason thereof afterwards, to wit, the 18th day of *October* in the 10th year of the said lord the now king, at *Westminster*

The words.

[80]

By reason where
of the plaintiff
lost his place.

minster aforesaid in the county aforesaid, of and from his said office was altogether deprived and removed, and the same totally lost: And the said *J.* of his farther malice and envy had against the said *E.* afterwards, to wit, the 11th day of *November* in the 10th year aforesaid, at *Westminster* aforesaid in the county aforesaid, certain other false, feigned and scandalous words of the same *E.* in the presence and hearing of very many other liege subjects of the said lord the now king, openly and publicly spoke, uttered and pronounced in these *English* words following, to wit, I (meaning him the said *J.*) have given Mr. *Dummer* (meaning him the said *E.*) at several times 800*l.* as bribes, and I (again meaning him the said *J.*) will prove the said sums were given him (again meaning him the said *E.*) and the times when; I (meaning him the said *J.*) have overcome the king, and now I (again meaning him the same *J.*) will fall upon that rascal *D.* (meaning the said *Edward*) and get my 800*l.* again: And the same *J.* of his farther malice and envy had against the said *E.* to wit, the same day, year and place last mentioned, these other false, feigned and scandalous words of the same *E.* in the presence and hearing of very many other faithful subjects of the said lord the now king, openly and publicly spoke, asserted, related, uttered and published in these *English* words following, to wit, I (meaning him the said *J.*) have given Mr. *D.* (meaning him the said *E.*) 600*l.* as a bribe: And the same *J.* of his farther malice and envy had against him the said *E.* afterwards, to wit, the same day, year and place last mentioned, these other false, feigned and scandalous words of the same *E.* in the presence and hearing of very many other faithful subjects of the said lord the now king, openly and publicly spoke, asserted, related, uttered and published in these *English* words following, to wit, I (meaning him the said *J.*) have given Mr. *D.* (meaning him the said *E.*) money at several times as bribes, and I (again meaning him the said *J.*) will prove the sums and times when: By reason of the speaking and publishing of which said last mentioned false and scandalous words, the same *E.* in his good name, credit and reputation is greatly hurt and damnified; whereby the said *E.* says that he is prejudiced, and hath damage to the value of 5000*l.* And therefore he produces the suit, &c.

Issue Not guilty.

*In this case the plaintiff recovered a verdict for 300*l.* whereupon a writ of error was brought in the Exchequer chamber, and the judgment affirmed.*

Hawbank and Trim.

Case for not putting out of a buoy to the defendant's ship, whereby the

Midd. to wit. *George Hawbank* complains of *Matthew Trim* in the custody of the marshal, &c. for this, to wit, that whereas the said *George* on the 23d day of *September* in the year of the lord 1697, at the parish of *Stebunheath*, other-

wife

wife *Stepney* in the county aforesaid, was and yet is master of a ship called the *Herring* being then in the river of *Thames* in the parish and county aforesaid, the said river then being a navigable river, and the king's common highway; which said ship was then and there moored ashore in the parish and county aforesaid: And whereas the said *Matthew* the same day and year, and before, was and yet is master of a ship called the *Robert* and *Samuel* then and there being in the river aforesaid near the said ship of him the said *George*, the said *Matthew*, contriving and maliciously intending greatly to hurt and prejudice him the said *George*, a certain anchor out of the ship aforesaid called the *Robert* and *Samuel*, and to the same ship with a rope fixed, into the said river then and there threw, and in the river aforesaid for the space of hours then next continued, and did not affix a buoy to the said anchor to shew where the said anchor was put, by reason whereof the ship aforesaid, called the *Herring*, afterwards, to wit, the same day and year, at the parish aforesaid in the county aforesaid, in the ebbing of the tide, for want of fixing a buoy to the anchor aforesaid in the said river *Thames* in the parish and county aforesaid, fell upon the said anchor of him the said *Matthew*, whereby that ship falling upon the said anchor through the said neglect of him the said *Matthew*, and by reason thereof was so much broke that the said ship then and there sunk; and for this, to wit, that whereas by the custom of *England* from time immemorial used and approved, all masters of ships, whose ships are riding at anchor in any navigable river within this kingdom of *England*, used and for all the time aforesaid were accustomed and ought to fix a buoy to their anchors holding their ships, whereby other ships being in that river by such buoy might avoid such anchors, so that they might not be damaged thereby; and whereas the said *George* afterwards, to wit, on the 23d day of *September* in the year last aforesaid, at the parish of *Stebunheath*, otherwise *Stepney* aforesaid in the county aforesaid, was and yet is master of another ship, called the *Herring*, then being in the river *Thames* in the parish and county aforesaid, which said ship was moored a-shore in the parish and county aforesaid: And whereas the said *Matthew* then and there was master of a certain other ship, called *The Robert and Samuel*, riding at anchor in the said river *Thames* in the parish and county aforesaid, near unto the said last mentioned ship of him the said *George*: Nevertheless the said *Matthew* contriving and intending greatly to hurt and prejudice him the said *George* a certain anchor out of the said ship, called *The Robert and Samuel*, and to the same ship with a rope fixed, into the said river then and there threw, and in the said river there for the space of twenty hours then next following continued, and did not affix a buoy to the said anchor of his last mentioned ship, to shew where the said anchor of the last mentioned ship of him the said *Matthew* was placed, by reason whereof the last mentioned ship of him the said *George* afterwards, to wit, the same day and year aforesaid, at the

plaintiff's ship
 split upon her
 anchor. M. 10
 W. 3.

[81]

The custom.

Continuing of it
 without a buoy.

the parish aforesaid in the county aforesaid, in the ebbing of the tide, for want of fixing a buoy to the anchor aforesaid of the last mentioned ship of him the said *Matthew* then being in the said river *Thames* in the parish and county aforesaid, fell upon the anchor of him the said *Matthew* last mentioned so as aforesaid placed in the said river *Thames* in the parish and county aforesaid, whereby the said ship of him the said *George* last mentioned loaden with sea-coals falling upon the anchor of him the said *Matthew* last mentioned, through the neglect of him the said *Matthew*, was so much broke that the said ship of him the said *George* last mentioned then and there sunk, whereby the same *George* says that he is prejudiced, and hath damage to the value of 200*l*. And therefore he produces the suit, &c.

Rosewell against Pryor.

Hill. 9 Will. 3. Roll 362.

Cafe for stopping up of lights.

Note: It is not said antient messuage, neither antient windows. And after verdict this was moved in arrest of judgment.

But by the whole court, it being after a verdict it shall be intended that it was given in evidence at the trial, that the house and windows were ancient.

But *Wright*, Serjeant, and *Northey* were of opinion, that the declaration would have been good upon a demurrer.

Salk. 460, 714.
Mod. Cases 416.
Pract. Reg. 16, 29.

[82]

Midd' to wit. *N*athaniel *Rosewell* complains of *Samuel Pryor* and *Richard Avery* in the custody of the marshal, &c. for this, that whereas the said *Nathaniel*, on the first day of *June* in the ninth year of the reign of the lord *William* the third, now king of *England*, &c. and continually from thence hitherto was possessed and yet is possessed of and in a messuage situate and being in the parish of *St. Martin in the Fields* in the county of *Middlesex* aforesaid, for a term of divers years then and yet to come and unexpired, and of twenty-one windows in and upon part of the south side, and of eight windows in and upon part of the east side of the said messuage, in and through which said windows light into the said messuage, on the said first day of *June* in the ninth year above said, was let and was accustomed to be let, and then and yet ought to be let for the enlightening of his said house, they the said *Samuel* and *Richard* not ignorant of the premises, but maliciously intending and contriving to deprive him the said *Nathaniel* of the use and benefit of the said several windows, afterwards, to wit, the said first day of *June* in the ninth year of the reign of the said lord the now king, at the said parish of *St. Martin in the Fields* in the county aforesaid, a certain edifice so near the said windows in the said house of him the said *Nathaniel* built and erected, and from thence until the first day of *October* then next following continued, and thereby the said windows were stopped up and darkened, whereby the said *Nathaniel* was deprived of and lost the use and benefit of the said windows from the said 1st day of *June* in the 9th year above said until the said 1st day of *October* then next following; whereby the same *Nathaniel* says that he is prejudiced, and has damage to the value of 100*l*. And therefore he produces the suit, &c.

Not guilty pleaded, and verdict and judgment for the plaintiff.

Rosewell

Rosewell against Pryor.

Trin. II W. 3.

Midd' to wit. **N**athaniel Rosewell complains of Samuel Pryor in the custody of the marshal, &c. forth is, that whereas the said Nathaniel on the 2d of *October* in the 9th year of the reign of the lord William the third, now king of *England*, &c. and continually from thence hitherto was possessed and yet is possessed of and in one messuage situate and being in the parish of *St. Martin in the Fields* in the county aforesaid, for the term of divers years then and yet to come and unexpired, and of 21 windows in and upon part of the south side, and eight windows in and upon part of the east side of the said messuage, in and through which said windows light into the said messuage, before the erection and at the time of the erection of a certain edifice herein after mentioned, was of right let, and yet of right ought to be let, for the enlightening of his said house: Nevertheless the said Samuel not ignorant of the premises, but maliciously intending and contriving to deprive the said Nathaniel of the use and benefit of the said several windows, afterwards, to wit, on the same second day of *October* in the ninth year of the reign of the said lord now the king aforesaid, and from the same second day of *October* in that year until the 20th day of *October* in the 10th year of the reign of the said lord the now king, at the parish of *St. Martin in the Fields* in the county aforesaid, a certain edifice by him the said Samuel before, to wit, on the first day of *June* in the 9th year aforesaid, to the nuisance of the said messuage then and yet of him the said Nathaniel, near the said windows of him the said Nathaniel there built and erected continued, and thereby the said windows from the same 2d day of *October* in the 9th year aforesaid until the 20th day of *October* in the 10th year aforesaid were stopped up and darkened, whereby the same Nathaniel was deprived of and lost the use and benefit of the said windows from the said second day of *October* in the 9th year aforesaid until the said 20th day of *October* in the 10th year aforesaid: And whereas also the said Nathaniel, on the said second day of *October* in the 9th year of the reign of the said lord the now king aforesaid, and continually from thence hitherto was possessed and yet is possessed of an antient house, situate and being in the parish of *St. Martin in the Fields* in the county aforesaid, for a term of divers years then and yet to come and unexpired, and of twenty-one antient windows in and upon part of the south side, and eight antient windows in and upon part of the east side of the said antient messuage, in and through which said windows light into the said antient messuage aforesaid, before the erection and at the time of the erection of the other edifice herein after mentioned, was of right let, and yet of right ought

Case for the continuance of the stopping up of lights.

To this count there was a demurrer, it not being said that the lights were antient lights.

To this count the defendant pleaded Not guilty; upon which issue the cause was tried in *Middlesex*, whereupon this rule was made, and the plaintiff had judgment; a writ of error was after brought in the exchequer chamber, and judgment affirmed there.

ought to be let, for the enlightening of his said antient messuage last mentioned: Nevertheless the said *Samuel* not ignorant of the premisses, but maliciously intending and contriving to deprive the said *Nathaniel* of the use and benefit of the said several windows last mentioned, afterwards, to wit, on the same 2d day of *October* in the 9th year of the reign of the said lord the now king above said, and from the said second day of *October* in that year until the twentieth day of *October* in the 10th year of the reign of the said lord the now king above said, at the said parish of *St. Martin in the Fields* in the county aforesaid, a certain other edifice by the said *Samuel* before, to wit, on the first day of *June* in the 9th year above said, to the nuisance of the said ancient messuage then and yet of him the said *Nathaniel*, near the said several last mentioned antient windows of him the said *Nathaniel* there built and erected did continue, and thereby the windows last aforesaid, from the same second day of *October* in the ninth year above said until the twentieth day of *October* in the 10th year above said, were stopped up and darkened, whereby the same *Nathaniel* was deprived of and lost the use and benefit of the said windows, from the said second day of *October* in the ninth year above said until the twentieth day of *October* in the tenth year above said: whereby the same *Nathaniel* says that he is prejudiced, and hath damage to the value of 40*l*. And therefore he produces the suit, &c.

[83]

Rosewell and Pryor.

Midd. to wit. *At the sittings held at Westminster in the great hall of pleas in the county of Middlesex, on Thursday the 29th day of June in the 11th year of the reign of the Lord William the third, now king of England, &c. before John Holt, knt. chief justice of the said lord the king assigned to hold pleas before the king himself.*

IT is order'd by the assent of the parties, their counsel and attornies, that the *poslea* shall remain in the hands of the said chief justice until the same chief justice shall otherwise order; and that it be referred to the same chief justice to have his opinion, whether the action upon the issue joined between the said parties be maintainable in law against the defendant (the same defendant, during the whole time of the continuance of the erection of the edifice in the said action mentioned, not being occupier of that edifice) or not: And it is farther order'd by the assent aforesaid, that this order be made a rule of the same court of the said lord the king before the king himself, if the same court shall think fit.

By the court.

Heath

Heath against Heath.

London, to wit. *Gilbert Heath*, executor with one *Gilbert Heath* now deceased of the last will and testament of *Joshua Heath* his father deceased, complains of *Richard Heath* in the custody of the marshal, &c. for this, to wit, that whereas the said *Richard Heath* on the first day of *January* in the first year of the reign of the lord *George* now king of *Great Britain*, &c. at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, was indebted to the said *Joshua Heath* in his life-time in 20*l.* of lawful money of *Great Britain*, for divers goods, wares, and merchandizes, by the said *Joshua Heath* in his life-time to the same *Richard Heath* and at his special instance and request before that time there sold and delivered; and the the said *Richard Heath* being so therein indebted to the same *Richard Heath* then and there in consideration thereof assumed upon himself, and to the said *Joshua Heath* in his life-time then and there faithfully promised, that he the same *Richard Heath* the said 20*l.* to the said *Joshua Heath*, when he should be thereto after required, would well and faithfully pay and content: And whereas also the said *Joshua Heath* in his life-time afterwards, to wit, the same day and year abovesaid, at *London* aforesaid in the parish and ward aforesaid, at the like special instance and request of the said *Richard Heath* had sold and delivered to the said *Richard Heath* divers other goods, wares, and merchandizes; the same *Richard Heath* then and there faithfully promised, that he the said *Richard Heath* all such sums of money, as the said *Joshua Heath* for the goods, wares, and merchandizes last mentioned, reasonably deserved to have, to the same *Joshua Heath* in his life-time, when he should be thereto after required, would well and faithfully pay and content: And the same *Gilbert* in fact says, that the said *Joshua Heath* in his life-time, for the goods, wares and merchandizes aforesaid last mentioned, reasonably deserved to have of the said *Richard Heath* other 20*l.* of like money aforesaid, and thereof he the said *Richard Heath* then and there had notice: Nevertheless the said *Richard Heath* his several promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the said *Joshua Heath* in his life-time, and the said *Gilbert* after the death of the said *Joshua*, in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *Joshua Heath* in his life-time, or to the said *Gilbert* after the death of the said *Joshua Heath*, hath not paid, or in any wise contented for the same, altho' to do it the said *Richard Heath* by the said *Joshua Heath* in his life-time was required, but the said *Richard Heath* hath hitherto altogether refused to pay them to the said *Joshua Heath* in his life-time, or to the said *Gilbert Heath* after the death of the said *Joshua Heath* and doth yet altogether refuse to pay them

Assumpsit by a co-executor for goods sold by the testator.

them to the same *Gilbert*, in delay of the faithful execution of the will aforesaid, and to the damage of the said *Gilbert* 30*l*. And therefore he produces the suit, &c. And the same *Gilbert* produces here in court the letters testamentary of the said *Joshua Heath* aforesaid, whereby it sufficiently appears to the court of the said lord the now king here, that the said *Gilbert* is executor of the will aforesaid, and thereof hath the administration, &c.

[84]

Nurton against Paris.

Case by a passenger against a carrier for damages in overturning his waggon, whereby her collar bone was broke.

Midd', to wit. *Anne Nurton* complains of *Humphry Paris* in the custody of the marshal, &c. for this, to wit, that whereas the said *Humphry* on the first day of *July* in the first year of the reign of the lord *George*, now king of *Great Britain*, &c. and for divers years then last past and ever since hitherto was and yet is a common waggoner, to wit, between the city of *London* and town of *Ailesbury* in the county of *Bucks*: And whereas the said *Humphry* on the said first day of *July* in the year aforesaid, and long before and after hitherto was used and accustomed to convey and carry by himself and his servants in a certain waggon of the said *Humphry* divers subjects of the said lord the king, for a reasonable salary to him in that behalf to be paid from and between the city of *London* aforesaid, and the said town of *Ailesbury*: And whereas also she the same *Anne* the day and year aforesaid, at *London* in the parish of *St. Sepulchre* in the ward of *Farringdon* without, at the special instance and request of the said *Humphry* enter'd into the waggon aforesaid, to be conveyed and carried safely and securely from the city of *London* aforesaid to the town of *Ailesbury* aforesaid for a reasonable salary by him the said *Humphry* of the same *Anne* therefore to be had: and that the said *Humphry* the day and year aforesaid, at *London* aforesaid, the said *Anne* to convey and carry from the city of *London* aforesaid to the town of *Ailesbury* aforesaid in the waggon aforesaid had and received: Nevertheless the said *Humphry* contriving and intending to deceive and defraud the said *Anne*, did not convey or carry the said *Anne* from the city of *London* aforesaid to the town of *Ailesbury* aforesaid, but the said waggon the day and year aforesaid did so negligently and carelessly dispose, manage and drive, that the waggon aforesaid was overset and overturned, whereby the left collar bone of her the said *Anne* was broke, and the left shoulder bone of the said *Anne* was put out of joint, and the left arm of the said *Anne* was bruised, bent and maimed; whereby she says that she is prejudiced, and has damage to the value of 100*l*. And therefore she produces the suit, &c.

Hurb

Hurst and Hurst.

London, to wit. *Anne Hurst*, widow, executrix of the last will and testament of *Isaac Hurst* deceased, complains of *Dorothy Hurst*, widow, in the custody of the marshal, &c. For this, to wit, that whereas one *William Hurst* now deceased, in his life-time, to wit, on the fifth day of *December* in the year of the Lord 1697, at *London*, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, made his last will and testament, and by the same will made and constituted one *John Hurst* executor of his said will, and afterwards, to wit, the 6th day of *January* in the year of the Lord 1697 above-said, at *London* afore-said in the parish and ward afore-said died: And whereas also after the death of the said *William*, to wit, the 7th day of *January* in the year of the Lord 1697 above-said, at *London* afore-said in the parish and ward afore-said, the same *John* took upon himself the burden of the execution of the said will, and afterwards, to wit, the 21st day of *January* in the year of the Lord 1701, at *London* afore-said in the parish and ward afore-said, made his last will and testament, and by the same will made and constituted the said *Dorothy Hurst* executrix of his said will, and afterwards, to wit, the same 21st day of *January* in the year last above-said, at *London* afore-said in the parish and ward afore-said died: And whereas also after the death of the said *John*, to wit, on the 22d day of *January* in the year last above-said, at *London* afore-said in the parish and ward afore-said, the said *Dorothy* took upon herself the burden of the execution of the will of the said *John*: And whereas also divers goods and chattels which belonged to the said *William Hurst* at the time of his death, unadministred by the said *John Hurst* in his life-time, sufficient to satisfy all the debts of the said *William* by him in his life-time and at the time of his death due, and more, and also divers other the proper goods and chattels of the said *John Hurst* at the time of his death, sufficient to satisfy all the debts of him the said *John Hurst*, by him in his life-time due, and more, after the death of the said *John*, to wit, on the 24th day of *January* last above-said, at *London* afore-said in the parish and ward afore-said, to the hands and possession of the said *Dorothy* came, and yet are in her hands unadministred: And whereas also the said *Dorothy* afterwards, to wit, on the 12th day of *June* in the year of the Lord 1702, at *London* afore-said in the parish and ward afore-said, accounted with the same *Anne*, as well concerning divers sums of money to the said *Isaac* by the said *William* in his life-time due, and yet unpaid, for divers wares and merchandizes of the said *Isaac* in his life-time by him the said *Isaac* to the said *William* in his life-time, and at his instance and request, then before sold and delivered, as concerning divers other sums of money to the said *Isaac* at the time of his death due from the said *John Hurst* in his

Case by an executrix on an account stated by her with defendant for goods sold by her testator.

his life-time, and yet unpaid, for divers other wares and merchandizes of the said *Isaac* in his life-time, by the same *Isaac* to the said *John* in his life-time, and at his instance and request, then before sold and delivered; and upon that account the said *Dorothy* then and there was found in arrear to the said *Anne* in 13*l.* 6*s.* 7*d.* of lawful money of *England*; the said *Dorothy* in consideration thereof then and there, to wit, on the said 12th day of *June* in the year of the Lord 1702 above said, at *London* afore said in the parish and ward afore said, assumed upon herself, and to the same *Anne* then and there faithfully promised, to pay to the same *Anne* the said 13*l.* 6*s.* 7*d.* when she should be thereto after required: And whereas also the said *Dorothy* afterwards, to wit, the same 12th day of *June* in the year of the Lord 1702 above said, at *London* afore said in the parish and ward afore said, accounted with the said *Anne*, as well concerning divers other sums of money to the same *Isaac* from the said *William* in his life due, and yet unpaid, for divers other wares and merchandizes of the said *Isaac* in his life-time, by the said *Isaac* in his life-time to the same *William* in his life-time, and at his instance and request, then before sold and delivered, as concerning divers other sums of money to the said *Isaac* at the time of his death due from the said *John Hurst* in his life-time, and yet unpaid, for divers other wares and merchandizes of the said *Isaac* in his life-time, by the said *Isaac* to the same *John* in his life-time, and at his instance and request, then before sold and delivered; and upon that account the said *Dorothy* then and there was found in arrear to the said *Anne* in 14*l.* of lawful money of *England*; the said *Dorothy* in consideration thereof then and there, to wit, the same 12th day of *June* last mentioned, at *London* afore said in the parish and ward afore said, assumed upon herself, and to the same *Anne* then and there faithfully promised, to pay to the same *Anne* the said 14*l.* when she should be thereto after required: Nevertheless the said *Dorothy* her promises and assumptions afore said in form afore said made not regarding, but contriving and fraudulently intending the same *Anne* of the said several sums of money craftily and subtilly to deceive and defraud, the said 13*l.* 6*s.* 7*d.* or the said 14*l.* or any penny thereof, to the same *Anne* hath not yet paid, nor for the same hath hitherto any way contented, altho' to do it the said *Dorothy* afterwards, to wit, the first day of *August* in the year of the Lord 1702 above said, at *London* afore said in the parish and ward afore said, by the said *Anne* was required, but hath altogether refused, and yet doth refuse to pay her the same, to the damage of the said *Anne* 14*l.* And therefore she produces the suit, &c. And the same *Anne* produces here in court the letters testamentary of the said *Isaac*, whereby it sufficiently appears to the court of the said lady the now queen here, that the said *Anne* is executrix of the will of the said *Isaac*, and hath the administration thereof, &c.

London, to wit. *J. B.* late of *London*, merchant, and *E. B.* late of the same, merchant, were attached to answer *R. D.* in a plea of trespass on the case, &c. And whereon the same *Richard* by *A. B.* his attorney complains, that whereas he the said *Richard* on the 4th day of *M.* in the year at *London* aforesaid in the parish of *St. Peter le Poor* in the ward of *Broadstreet*, *London*, had paid 500*l.* by him before then subscribed in the third subscription to the governor and company of merchants of *Great Britain* trading to the *South-Seas* and other parts of *America*, and for the promoting of the fishery, &c. called the *South-Sea* company: And whereas also afterwards, to wit, the same day and year, at *London* aforesaid in the parish and ward aforesaid, it was agreed between the said *J.* and *E.* and the said *R.* that the said *R.* upon payment of 1550*l.* with interest after the rate of 5*l.* for the hundred by the year for the same from the day of that agreement, should deliver to the said *J.* and *E.* the said 500*l.* third subscription to the governor and company aforesaid, and that the said *J.* and *E.* should pay to the said *R.* upon the delivery of the said 500*l.* third subscription, that sum of 1550*l.* of lawful money of *Great Britain*, with interest for the same after the rate of 5*l.* for the hundred by the year from the day of the said agreement, and that the said *J.* and *E.* should allow and pay all future calls upon the said 500*l.* subscription: And thereupon the same *J.* and *E.* afterwards, to wit, the 5th day of *July* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, in consideration that the said *R.* then and there at the special instance and request of the said *J.* and *E.* had assumed upon himself, and to the same *J.* and *E.* then and there faithfully promised, to perform every thing in the said agreement contained on the part of the said *R.* to be performed, assumed upon themselves, and to the said *R.* then and there faithfully promised, that they the same *J.* and *E.* the agreement aforesaid, in all things on their parts to be performed, would well and faithfully perform: And the said *R.* in fact says, that afterwards, to wit, on the 10th day of *April* in the year of the Lord 1721, at *London* aforesaid in the parish and ward aforesaid, he the said *R.* delivered to the said *J.* and *E.* the said 500*l.* third subscription aforesaid: Nevertheless the said *J.* and *E.* not regarding their promise and assumption aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *R.* in this behalf, have not paid or caused to be paid, nor hath either of them paid or caused to be paid, the said sum of 1550*l.* with such interest for the same as is aforesaid, nor any penny thereof, according to the form and effect of the agreement aforesaid, altho' to do it they the said *J.* and *E.* were afterwards, to wit, the same day and year, at *London* aforesaid in the parish and ward aforesaid, and often after, by the said *R.* required, but have altogether refused, and yet do refuse to pay him, or cause him to be paid the

Cafe on a special contract to deliver 500*l.* third subscription to the *South-Sea* company, where part of the contract money was paid afterwards,

[86]

Breach.

1550*l.*

VOL. I.

L

same;

Laid another
way.

same: And whereas also afterwards, to wit, the fifth day of *July* in the year last above said, at *London* afore said in the parish and ward afore said, the said *R.* at the like instance and request of the said *J.* and *E.* had bargained and sold to the said *J.* and *E.* other 500*l.* third subscription to the company afore said for 1500*l.* of like lawful money, with interest for the same from the day of the bargain and sale thereof, payable after the rate of 5*l.* for the hundred by the year; in consideration thereof, and in consideration that the said *Richard* had taken upon himself and faithfully promised the said *J.* and *E.* to deliver to them the said *J.* and *E.* the said 500*l.* third subscription to the said company, they the same *J.* and *E.* afterwards, to wit, the same day and year last above said, at *London* afore said in the parish and ward afore said, assumed upon themselves, and then and there faithfully promised the said *R.* that they the same *J.* and *E.* would pay to the said *Richard* the said other sum of 1500*l.* with interest for the same from the said day of the bargain and sale thereof, upon his delivering to them the said other 500*l.* third subscription to the said company: And the said *Richard* in fact says, that afterwards, to wit, on the 26th day of *M.* in the year of the Lord 1721 above said, at *London* afore said in the parish and ward afore said, he the said *R.* delivered to the said *J.* and *E.* the said last mentioned 500*l.* third subscription to the said company: Nevertheless the said *J.* and *E.* have not paid or caused to be paid, nor hath either of them paid or caused to be paid, the said sum of 1500*l.* with such interest for the same as is afore said, nor any penny thereof, altho' to do it they the said *J.* and *E.* were afterwards, to wit, the same day and year last above said, at *London* afore said in the parish and ward afore said, and often after, by the said *R.* required, but have altogether refused, and yet do refuse to pay him, or cause him to be paid the same: And whereas also the said *J.* and *E.* afterwards, to wit, on the fifth day of *July* in the year of the Lord 1721, at *London* afore said in the parish and ward afore said, in consideration that the said *R.* at their like special instance and request had sold to them the said *J.* and *E.* other 500*l.* by him the said *R.* subscribed in the third subscription to the said company, and in consideration that the said *R.* had assumed upon himself, and faithfully promised the said *J.* and *E.* to deliver to them the said *J.* and *E.* the said last mentioned 500*l.* subscription, assumed upon themselves, and then and there faithfully promised the said *R.* that they the said *J.* and *E.* would well and faithfully content and pay the said *R.* another sum of 1500*l.* of like lawful money, with interest for the same from the day of the sale, upon his delivery of the 500*l.* subscription last mentioned: And the said *R.* in fact saith, that at a general court of the said company held on the 18th day of *M.* in the .7th year of the reign of the lord the now king, it was ordered, that stock of the governor and company afore said should be immediately given for payment on the third subscription afore said after the rate of 400*l.* by

Breach.

Laid another
way.

Averment.

by the hundred for every 100*l.* thereof, with the *Midsummer* dividend of 10*l.* by the hundred for every 100*l.* thereof in the stock of the same company, whereof the said *J.* and *E.* afterwards, to wit, the same day and year, at *London* aforesaid in the parish and ward aforesaid had notice: And the said *R.* farther in fact saith, that afterwards, to wit, on the 27th day of *A.* in the 7th year of the reign of the now king aforesaid, at *London* aforesaid in the parish and ward aforesaid, at the *South-Sea* house being in the parish and ward aforesaid, from 10 o'clock till 12 o'clock of the same day (the same *J.* and *E.* having notice by the said *R.* then before given, that they should be present at the place and time aforesaid to claim and receive the stock for the said last mentioned 500*l.* third subscription to the governor and company aforesaid allowed) he the said *R.* continually there remained, and for all the said time was there ready, and offered to deliver to them the said *J.* and *E.* the said last mentioned 500*l.* by him the said *R.* subscribed in the third subscription aforesaid, and to transfer to the same *J.* and *E.* all such stock and other benefit as by the governor and company aforesaid was or should be given or allowed for the said last mentioned 500*l.* in the third subscription by him the said *R.* subscribed as aforesaid, and they the said *J.* and *E.* then and there might claim and have the said last mentioned 500*l.* subscription: Nevertheless the said *J.* and *E.* then and there did not come, nor did either of them, or any other person for them or either of them, then and there come to receive or claim the said last mentioned 500*l.* third subscription, or to accept the stock or other benefit which was or should be given or allowed by the governor and company aforesaid for the said 500*l.* the money paid by the said *R.* in the 3d subscription aforesaid, but the said *J.* and *E.* have altogether refused to accept the said last mentioned 500*l.* in the third subscription aforesaid, or such stock and other benefit as should be given or allowed for the same by the governor and company aforesaid; yet the said *J.* and *E.* or either of them, at that time or at any other time hitherto have not paid or caused to be paid, nor hath either of them paid or caused to be paid, the said 1500*l.* last mentioned, or any penny thereof, although they the said *J.* and *E.* afterwards, to wit, the same day and year, at *London* aforesaid in the parish and ward aforesaid, and often after were requested to do it by him the said *R.* but they the said *J.* and *E.* have altogether denied, and yet do deny to pay him or cause him to be paid the same, to the damage of the said *Richard* 1600*l.* And therefore he produces the suit, &c.

Breach.

[87]

Mason and Slipper.

Case against the
sheriff for an es-
cape on an Ex-
communicato ca-
piendo.

Norfolk, to wit.

Richard Mason late of *Nelson* in the county
aforesaid, esq; was attached to answer to
Samuel Slipper, clerk, in a plea of trespass on the case, &c.
And whereon the said *Samuel* by *William Betts* his attorney
complains, why whereas *George Oxenden*, doctor of laws, of the
court of *Canterbury* of the arches *London* official principal law-
fully constituted, in a certain cause of appeal and complaint,
which before him in judgment between the said *Slipper* the party
appealing and complaining and one *William Dade* the party
appellee and respondent, in a certain cause ecclesiastical and of
spiritual jurisdiction, to wit, for subtraction and non-payment of
tithes in the same court, to wit, at *London* in the parish of *St.*
Mary-le-bow in the ward of *Cheape*, lately depending, right-
fully and lawfully proceeding, the same *William Dade* for his
manifest contumacy and contempt in not paying the sum of
4*l.* 12*s.* 2*d.* of lawful money of *England* for tithes or the prin-
cipal, and the sum of 17*l.* of like money of *England* for the
expences of suit as well in the first as the last suit, amounting
in the whole to the sum of 21*l.* 12*s.* 2*d.* to the said *Samuel*
Slipper or his proctor within a competent time in that behalf
lawfully assigned, altho' thrice admonished and long and suffici-
ently waited for, and in no wise regarding to pay the respective
sums, pronounced contumacious, and for the punishment of such
his contumacy decreed him to be excommunicated, and caused
and commanded him in the face of the church, the order of the
law being in that behalf first observed, openly and publickly to
be declared excommunicated as such: Which said premisses
Thomas by divine providence archbishop of *Canterbury*, primate
and metropolitan of all *England*, afterwards, to wit, the 2d day
of *October* in the year of the Lord 1697, under the seal of the
same court to the said lord the now king in his chancery then
at *Westminster* in the county of *Middlesex* signified; and there-
upon it was in such manner proceeded, that afterwards, to wit,
on the 26th day of *October* in the 9th year of the reign of the
lord the now king, a certain writ of the said lord the king of
Excommunicato capiendo issued out of the court of chancery afore-
said at *Westminster* aforesaid against the same *William*, directed
to the then sheriff of the county of *Norfolk* aforesaid, by which
said writ the said then sheriff was commanded that he should
take the said *William Dade* by his body, according to the cus-
tom of *England*, until he should satisfy the holy church, as well
for the contempt as for the injury by him done her; and that the
said sheriff should make known to the said lord the king in the oc-
tave of *St. Hillary* then next following, wheresoever the said lord
the king should then be in *England*, how he had executed that
writ; and farther, that he should cause to be done in the pre-
misses as of right, and according to the form of the statute in
that

that case lately made and provided, ought to be done, and that he should no way omit; and should have there that writ: Which said writ afterwards, and before the said octave of St. *Hillary*, to wit, in *Michaelmas* term in the ninth year above said, was allowed among the pleas of the king inrolled and delivered of record to the same *Richard* (the said *Richard* being then sheriff of the county of *Norfolk* afore said) before the lord the king at *Westminster* afore said, according to the form of the statute in such case lately made and provided; by virtue of which said writ the same *Richard Mason* afterwards, and before the return thereof, to wit, on the 1st day of *December* in the 9th year above said, at *Catton* in the said county of *Norfolk*, (the same *Richard* then being sheriff of the county of *Norfolk* afore said) the same *William* by his body took and arrested, and him in his custody there had and detained for the cause afore said, until the same *Richard Mason* contriving and fraudulently intending to deprive the said *Samuel* of his remedy afore said by reason of that imprisonment for the obtaining the sum of money afore said, afterwards, to wit, on the 1st day of *January* in the 9th year above said, the said *William* at *Catton* afore said (the same *Richard* being then and there sheriff of the county afore said) without any authority whatever, and without the licence and against the will of the said *Samuel* or any bishop or arch-bishop, and without any bail whatever given by the said *William* to obey the commands of the church in form of law, permitted to go at large and escape where he would, (the same *Samuel* being then and yet not paid the several sums afore said, or any part thereof); and the said *William* hath ever since elained himself to places altogether unknown to the said *Samuel*; and by reason of the premises the said *Samuel* is wholly defrauded of all remedy for obtaining the said sums of money, to the damage of the said *Samuel* 50*l*. And therefor he produces the suit, &c.

[88]

Pleas before the lady the now queen in her chancery at Westminster in the county of Middlesex, in Michaelmas term in the eighth year of the reign of the lady Anne, by the grace of God of Great Britain, France and Ireland queen, defender of the faith, &c.

London, to wit. *Richard Tyrrell* by *William Smith*, esq; his attorney complains against *James Sedgewicke*, esq; one of the cursitors of the court of chancery of the said lady the now queen, present here in court in his proper person, for this, to wit, that whereas the said *James* on the 17th day of *October* in the eighth year of the reign of the lady *Anne* now queen of *Great Britain*, &c. afore said, at *London* afore said, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, was indebted to the said *Richard* in 35*l*. of lawful money of *Great Britain*, as well for divers goods, wares and merchandizes of the said *Richard*, by him the said *Richard*,

The entry of the issue and nisi prius record in *Assumpsit* against a cursitor, brought in the petty-bag-office for goods sold and joyner's work.

at the special instance and request of the said *James*, to the said *James* before that time sold and delivered, as for joyner's work by him the said *Richard* for the said *James*, at the like special instance and request of the said *James*, before that time done and performed; and being so therein indebted the same *James* afterwards, to wit, the same day and year, at *London* aforefaid in the parish and ward aforefaid, in consideration thereof assumed upon himself, and to the same *Richard* then and there faithfully promised, that he the said *James* the said 35*l.* to the same *Richard*, when he should be thereto after required, would well and faithfully pay and content: And whereas also the said *James* the same 17th day of *October* in the 8th year abovefaid, at *London* aforefaid in the parish and ward aforefaid, in consideration that the said *Richard*, at the like special instance and request of the said *James*, had sold and delivered to the said *James* divers other goods, wares and merchandizes of the said *Richard*, and had done and performed other joyner's work for the same *James* before that time, assumed upon himself, and to the same *Richard* then and there faithfully promised, that he the said *James* so much money of like lawful money of *Great Britain*, as he the same *Richard* reasonably deserved to have for the same *Richard*, when he should be thereto after required, would well and faithfully content and pay: And the same *Richard* in fact says, that he the said *Richard* reasonably deserved to have for the same other 35*l.* of like lawful money, whereof the said *James* afterwards, to wit, the same day and year abovefaid, at *London* aforefaid in the parish and ward aforefaid, had notice: Nevertheless the said, &c. hath wholly refused and yet doth refuse, to the damage of the said *Richard* 100*l.* And therefore he prays remedy, &c. Pledges to prosecute *John Doe* and *Richard Roe*. Whereupon day is given by the court here to the said *James* until *Monday* next after a month of *St. Michael* in this same term, to make his answer to the said bill of him the said *Richard*: The same day is given to the said *Richard* here, &c. At which day before the said lady the now queen in her said chancery, to wit, at *Westminster* aforefaid, comes as well the said *Richard* by his attorney aforefaid, as the said *James* in his proper person; and the said *Richard* prays that the said *James* may answer to his bill aforefaid: And the said *James* in his proper person comes and defends the force and injury when, &c. and says that he did not assume upon himself in manner and form as the said *Richard* above against him complains: And of this he puts himself upon the country: And the said *Richard* thereof likewise, &c. And thereupon the said *Richard* prays a writ of the said lady the now queen of *venire facias* to the sheriffs of *London* aforefaid to be directed, to try the issue aforefaid between the parties aforefaid in form aforefaid joined: And it is granted to him by the same court here, &c. The same day is given to the parties aforefaid before the said lady the now queen until *Monday* next after the octave of *St.*

comparlance.

Did not assume.

Venire awarded.

Day given to the parties in *K. B.*

[89]

St. Hillary next coming, where-ever she shall then be in *England*, to do and receive what shall be just in the premises: And the sheriffs of *London* aforesaid are commanded that they cause to come before the same lady the now queen at that day twelve free and lawful men of the city of *London* aforesaid, each of whom hath 10*l.* of lands, tenements or rent, by the year at least, by whom the truth of the fact may the better be known, and who are neither of affinity to the said *Richard* nor to the said *James*, to recognize on their oaths more fully the truth of and concerning the premises.

Pleas before the lady the queen at Westminster of Hillary term in the 8th year of the reign of the lady Anne, now queen of Great Britain, &c.

Midd, to wit. **BE** it remember'd that *William Cowper*, baron of *Wingham*, lord chancellor of *Great Britain*, on *Monday* next after the octave of St. *Hillary* this same term before the lady the queen at *Westminster*, by his own proper hands delivered here into court a certain record had before the said lady the now queen in her chancery at *Westminster* in the county of *Middlesex*, in these words: Pleas before the lady the now queen in her chancery at *Westminster* in the county of *Middlesex* in *Michaelmas* term in the 8th year of the reign of the lady *Anne*, by the grace of God of *Great Britain, France and Ireland* queen, defender of the faith, &c. *London*, to wit; *Richard Tirrel* by *William Smith*, esq; his attorney complains against *James Sedgewick*, esq; one of the cursitors of the said lady the now queen, present here in court in his proper person, for this, to wit, *And so recite the issue in the petty-bag office*; and who are neither of affinity to the said *Richard* nor to the said *James*, to recognize on their oaths more fully the truth of and concerning the premises: At which day before the lady the queen at *Westminster* comes as well the said *Richard Tirrell* by *Shaw* his attorney, as the said *James Sedgewick* in his proper person: And the sheriffs of *London* aforesaid, to wit, *Richard Hoare*, knt. and *Thomas Dunk*, esq; return the writ of the lady the queen of *venire facias* to them in form aforesaid directed in all things served and executed, together with a panel of the names of the jurors to the same writ annexed, of whom none, &c. Therefore the sheriffs of *London* aforesaid are commanded, that they distrain the jurors aforesaid by all their lands, &c. And that of the issues, &c. so that they may have their bodies before the lady the queen at *Westminster* on *Monday* next after the octave of the purification of the blessed *Mary*, or before *John Powell*, knt. one of the justices of the lady the queen assigned to hold pleas in the court of the said lady the queen before the queen herself, if he shall before come, on *Saturday* next after the purification of the blessed *Mary*, at *Guildhall, London*, by the form of the statute, &c. for want of jurors, &c. Therefore let the sheriffs have their bodies, &c. The same

The *nisi prius* record.

L 4

day

13 E. 1. c. 30.
12 E. 2. 4.
14 E. 3. c. 16.

The postea,

day is given to the parties aforesaid there, &c. Afterwards the day and year within contained, before *John Powell*, knt. one of the justices of the lady the queen, within written, *John Ince*, gent. being associated to him by the form of the statute, &c. comes the within named *Richard Tirrell* by his attorney within contained, and the within written *James Sedgewick*, altho' at the same day solemnly called, comes not, but makes default; therefore the jury within mentioned is taken against him by default; whereupon the jurors of that jury being called, some of them, to wit, *Thomas Salter*, *Thomas Watson*, *T. W. A. B.* and *J. C.* come, and on that jury are sworn: And because the residue of the jurors of that jury do not appear, therefore others from the by-standers, by the sheriffs aforesaid to this elected, at the request of the said *Richard*, and by the command of the justice aforesaid, are added anew, whose names to the panel within written are affixed according to the form of the statute in such case made and provided: And the jurors so added anew, to wit, *T. S. G. F.*, *J. B. R.*, *R. W. B.*, *J. L.* and *G. C.* being called likewise come, who to say the truth of the within contained, together with the other jurors aforesaid before impanelled and sworn, being elected, tried and sworn, say upon their oaths, that the within named *James Sedgewick* did assume upon himself in manner and form as the said *Richard Tirrell* within complains against him; and they assess the damages of the said *Richard Tirrell* by reason of the premisses within written, beside his costs and charges by him about his suit in this behalf laid out, to 34*l.* 10*s.* 11*d.* and for those costs and charges to 53*s.* 4*d.* Therefore, &c.

Verdict for the
plaintiff.

18 Feb. 1709.

For costs of increase 11*l.* 5*s.* 9*d.*
Damages in the whole 48*l.* 10*s.*[90]
The venire.

Anne by the grace of God of Great Britain, France and Ireland queen, defender of the faith, &c. To the sheriffs of London, greeting: We command you that you cause to come before us in our court on Monday next after the octave of St. Hillary next coming, wherever we shall then be in England, twelve free and lawful men of the city of London aforesaid, each of whom has 10*l.* of lands, tenements or rent, by the year at least, by whom the truth of the fact may be the better known, and who are neither of affinity to *Richard Tirrell* nor to *James Sedgewick*, esq; one of the cursitors of our court of chancery, to make a certain jury of the country between the parties aforesaid in a plea of trespass on the case, because as well the said *James* as the said *Richard*, between whom therein is a dispute, have put themselves on that jury: And have there the names of the jurors and this writ. Witness ourself at Westminster 29th day of November in the 8th year of our reign.

Trevor Bauling.

The

The execution of this writ appears in the panel annexed.

The return.

The answer of { *Richard Hoare*, knt.
and
Thomas Dunk, esq; } sheriffs.

Jurors between *Richard Tirrell* and *James Sedgewick*, esq; one of the cursitors of the court of chancery, &c. in a plea of trespass on the case.

A. B. of, &c.

C. D. of, &c. and so the rest of the panel to

And *John Watson*.

Each of the jurors aforesaid by himself is summoned.

By { *John Doe*
and
Richard Roe.

Anne by the grace of God of Great Britain, France and Ireland queen, defender of the faith, &c. To the sheriffs of London, greeting: We command you that you distrain *T. S. J. W.* &c. the jurors summoned between *Richard Tirrell* plaintiff and *James Sedgewick*, esq; one of the cursitors of our court of chancery, by all their lands and chattels in your bailiwick, so that neither they nor any for them lay hands on them until you shall have therein other command from us, and that you answer to us for the issues of the same, so that you may have their bodies before us at *Westminster* on Monday next after the octave of the purification of the blessed *Mary*, or before our trusty and well beloved *John Powell*, kt. one of our justices assigned to hold pleas before us, if first he shall before come on Saturday next after the octave of the purification of the blessed *Mary*, at *Guild-hall*, London, by the form of the statute in such case thereof made and provided, to make a certain jury between the parties aforesaid in a plea of trespass on the case, and to hear their judgment therein for their former default: And have there then the names of the jurors and this writ. *Witness J. Holt*, at *Westminster* 23d day of January in the 8th year of our reign.

The distringas.

Warton, knt. and *Careiron* and another.

Midd, to wit.

Anne, &c. To the sheriffs of London greeting: If *Michael Warton*, kt. shall give you security to prosecute his suit, then put by bail and safe pledges *David Careiron* late of London, merchant, and *D. M.* late of London, merchant, that they may be before us from the day of St. Michael in one month, wheresoever we shall then be in England, to shew why whereas one *Alexander Crommeline*, being a merchant

An original writ out of chancery in an action on the case by an assignee against the acceptor of an outland bill of exchange payable at two usances and a half.

[91]

Indorsed.

Another indorsement to plaintiff.

Notice.

Averment of
uses between
merchants at
Hambourgh and
London.

merchant and a person using trade, on the 18th day of *July* in the new stile, being the 7th day of the same month of *July* in the *English* stile in the year of the Lord 1702, at *Hambourgh* in parts beyond the seas, to wit, at *London* aforesaid in the parish of *St. Mary-le-bow* in the ward of *Cheape*, made according to the use and custom of merchants a certain bill of exchange subscribed with his own hand, and directed it to the before mentioned *David* and *David* at *London* aforesaid; by which said bill of exchange the same *Alexander* required the same *David* and *David*, at two usances and an half, to pay upon that his first exchange to the order of one *Lewis Mangin* the sum of 100*l.* sterling, value received of the said *Lewis*, and to place it to account according to advice; which said bill of exchange afterwards, and before the end of two usances and an half, to wit, on the 18th day of *July* in the *English* stile in the first year of our reign, at *London* aforesaid in the parish and ward aforesaid, was shewn to the same *David* and *David* for acceptance thereof, and the same *David* and *David* that bill of exchange then and there according to the use and custom of merchants accepted; and afterwards, to wit, the 19th day of *July* in the year last mentioned, at the parish and ward aforesaid, the said *Lewis Mangin*, by indorsement on that bill of exchange made according to the use and custom of merchants, ordered the said sum of 100*l.* to be paid to one *Philip Wilkinson*, the elder, of *Hull*, or order; and afterwards, to wit, the same day and year last mentioned, at the parish and ward aforesaid, the same *Philip*, by another indorsement upon the same bill of exchange made according to the use and custom of merchants, ordered the said sum of 100*l.* to be paid to the order of the said *Michael*, value received of Mr. *Robert Cook*; of which said indorsements the said *David* and *David* afterwards, to wit, the day, year and place last mentioned, had notice, whereby, according to the use and custom of merchants, the said *David* and *David* became chargeable and bound to pay the said sum of 100*l.* to the said *Michael*, according to the tenor of the bill of exchange aforesaid; and so being chargeable and bound, the same *David* and *David* in consideration of the premises afterwards, to wit, the same day and year last mentioned, at the parish and ward aforesaid, assumed upon themselves, and to the same *Michael* then and there faithfully promised, that the said *David* and *David* would content and pay the same *Michael* the said sum according to the tenor of the said bill of exchange: And the said *Michael* in fact says, that according to the use of merchants, an usance in a bill of exchange among merchants from *Hambourgh* and *London* aforesaid contains in it a month from the date of such bill and no more, and that a half usance contains in it fifteen days and no more, to wit, at the parish and ward aforesaid: Nevertheless the said *David* and *David* not regarding their promise and assumption aforesaid in form aforesaid made, but contriving and fraudulently intending the same *Michael* in this behalf craftily and subtilly to deceive and defraud, the said sum of 100*l.*

100*l.* or any part thereof to the said *Michael* at the end of two usances and an half next after the making of the said bill of exchange, or of the acceptance of the same bill, or at any other time hitherto, have not paid, nor hath either of them paid, but have altogether refused and yet do refuse to pay him the same, to the damage of the said *Michael* 130*l.* as he says: And have ye there the names of the pledges, and this writ. Witness ourself at *Westminster* the eighth day of *October* in the first year of our reign.

Breach.

Aiel.

[92]

Clitheroe and Francklyn.

Pleas of land inrolled at Westminster before Henry Polexfen, knt. and his companions, justices of the lord and lady the king and queen of the bench, of Michaelmas term in the first year of the reign of the lord and lady William and Mary now king and queen of England, &c.

Otherwise as it appears in *Easter* term last past in Roll 171, it is contained thus: *Midd'*, to wit, *Henry Clitheroe*, esq; by *R. G.* his attorney demands against *Thomas Francklyn*, esq; and *Mary* his wife, two messuages, forty acres of land, fifteen acres of meadow and forty acres of pasture, in *Harrow on the Hill*, of which *Christopher Clitheroe*, knt. grandfather of the said *Henry*, whose heir he is, was seised in his demean as of fee on the day in which he died, &c. and whereon he says, that the said *Christopher* the grandfather, &c. was seised of the tenements afore said in his demean as of fee and right in the time of peace, in the time of the lord *Charles* the first, late king of *England*, by taking the profits thereof to the value, &c. and of such estate so thereof died seised, &c. and from him the said *Christopher* descended the fee, &c. to one *Henry Clitheroe* as son and heir of the said *Christopher*, and from the said *Henry* descended the fee, &c. to this *Henry* who now demands as son and heir of the said *Henry* son of the said *Christopher*, and of which, &c. And therefore he produces the suit, &c.

Booth 200.
Salk. 568.
Pract. Reg.
172.

Count on the writ of aiel.

The fee descended.

And the said *Thomas* and *Mary* by *Samuel Corbet* their attorney come and say they cannot render the tenements afore said, with the appurtenances, to the before named *Henry*, because they say, that long before the said *Christopher* had any thing in the tenements afore said, with the appurtenances, one *Bryan Edlin*, gent. was seised of and in the tenements afore said, with the

Tenant appears and pleads seisin in fee.
Fine levied.

Uses of the fine.

27 H. 8. c. 10.
Seisin for life.

[93]
Death of one of
the tenants for
life.

The other tenant
for life dies.
Remainder de-
scends.
Seisin in tail.

the appurtenances, in his demean as of fee, and he so thereof being seised, a certain fine was levied in the court of the lord *James* the first, late king of *England*, to wit, in the octave of the blessed *Mary* in the year of the reign of the said king *James* the first of *England*, *France* and *Ireland*, the seventh, and of *Scotland* the forty-third, before *Edward Coke*, *Thomas Walmsley*, *Peter Warburton*, *William Daniel* and *Thomas Foster*, the justices and other faithful subjects of the said late king then there present, between the said *Christopher*, by the name of *Christopher Clitheroe*, plaintiff, and the before named *Brian* and *Margaret* then his wife, desorceants of the tenements aforesaid, with the appurtenances, by the name of one messuage, four cottages, five barns, four gardens, four orchards, thirty-four acres of land, ten acres of meadow, thirty acres of pasture and six acres of wood, with the appurtenances in *Pynnor*, whereof a plea of covenant was summoned between them in the same court, to wit, that the said *Brian* and *Margaret* acknowledged the said tenements, with the appurtenances, to be the right of the said *Christopher*, as that which he had of the gift of the said *Brian* and *Margaret*; and that they released and quitted claim from them the said *Brian* and *Margaret* and their heirs to the said *Christopher* and his heirs for ever: And farther the same *Brian* and *Margaret* granted for themselves and the heirs of the said *Brian*, that they would warrant to the said *Christopher* and his heirs the said tenements, with the appurtenances, against the said *Brian* and *Margaret* and the heirs of the said *Brian* for ever: Which said fine so had and levied was had and levied to the use of the said *Christopher* and *Mary* his then wife for the term of their lives and the life of the longer liver of them; and from and after their decease, to the use of the heirs male of the body of the said *Christopher*, on the body of the said *Mary* begotten or to be begotten; and for want of such issue, then to the use of the right heirs of the said *Christopher*: By virtue of which fine, and by force of the statute for transferring uses into possession, the said *Christopher* and *Mary* were seised of the tenements aforesaid, with the appurtenances, for the term of their lives and the life of the longer liver of them, the remainder thereof as is aforesaid: And afterwards, to wit, on the 18th day of *November* in the 17th year of the reign of the lord *Charles* the first, late king of *England*, at *Harrow on the Hill* aforesaid the said *Christopher* of such his estate died seised, and the said *Mary* him survived and kept herself in: And afterwards, to wit, on the 7th day of *March* in the year of the Lord 1648, the same *Mary* at *Harrow on the Hill* aforesaid of such her estate died seised; after whose death the tenements aforesaid, with the appurtenances, descended to one *Christopher Clitheroe*, as son and heir male of the said *Christopher* the grandfather by him on the body of the said *Mary* begotten, which said *Christopher* the son into the tenements aforesaid with the appurtenances entered, and was thereof seised in his demean as of fee-tail by virtue of the gift aforesaid;

aforefaid; and afterwards, to wit, on the 20th day of *April* in the year of the Lord 1655, the faid *Christopher* the fon, at *Harrow on the Hill* aforefaid, of fuch his eftate thereof died feifed; and from the faid *Christopher* defcended the fame tenements, with the appurtenances, to one *Thomas Clitheroe* as fon and heir of the faid *Christopher* the fon, which faid *Thomas Clitheroe* into the tenements aforefaid with the appurtenances entered, and was thereof feifed in his demean as of fee-tail, by virtue of the gift aforefaid; and afterwards, to wit, on 2d day of *November* in the year of our Lord 1681, at *Harrow on the Hill* aforefaid, the fame *Thomas* of fuch his eftate therein died feifed without heir male from his body iffuing; and from the faid *Thomas* defcended the tenements aforefaid, with the appurtenances, to one *Christopher Clitheroe* as brother and heir of the faid *Thomas*, which faid *Christopher* the brother into the tenements aforefaid with the appurtenances entered, and was thereof feifed in his demean as of fee-tail, by virtue of the gift aforefaid; and afterwards, to wit, on the 22d day of *October* in the year of our Lord 1686, at *Harrow on the Hill* aforefaid the fame *Christopher* the brother of fuch his eftate thereof died feifed without heir male from his body iffuing; and from the faid *Christopher* defcended the fame tenements aforefaid, with the appurtenances, to one *James Clitheroe*, as coufin and heir male of the faid *Christopher* the grandfather upon the body of the faid *Mary* begotten, to wit, fon and heir of the faid *James Clitheroe*, who was fon of *Christopher* the grandfather, by the fame *Christopher* the grandfather on the body of the faid *Mary* begotten, which faid *James* the fon into the tenements aforefaid with the appurtenances entered, and was feifed thereof in his demean as of fee-tail by virtue of the gift aforefaid; and the faid *James* fo thereof being feifed afterwards, and before the iffuing of the aforefaid writ, to wit, on the firft day of *January* in the year of the Lord 1686, at *Harrow on the Hill* aforefaid demifed the tenements aforefaid, with the appurtenances, to the faid *Thomas Franklin* and *Mary* his wife, as long as it fhould please the faid *James* and *Thomas Franklyn* and *Mary* his wife; by virtue of which faid demife the fame *Thomas* and *Mary* afterwards, and before the iffuing of the faid writ, to wit, the fame day and year, into the tenements aforefaid with the appurtenances entered, and were thereof poffeffed: And they farther fay, that they are not tenants of the fame tenements as of freehold, nor were on the day of the iffuing of the original writ of the faid *Henry*, or ever after: And this they are ready to verify: Wherefore they pray judgment of the writ aforefaid, &c.

Death of tenant in tail.

Entry of him in remainder.

Dies without iffue.

Defcent to the grandfather.

Entry and feifin in tail.

Leafe at will;

Not tenants of the freehold pleaded in abatement.

The demandant *protestando* replies they were tenants of the freehold, &c.

And the faid *Henry Clitheroe* fays that his writ aforefaid by any thing before alledged ought not to be quafhed, becaufe by protesting that the faid *Christopher Clitheroe* the grandfather did not die feifed of the tenements aforefaid, with the appurtenances, in his demean as of fee-tail, as the faid *Thomas Franklyn* and *Mary* his wife above by pleading have alledged, for plea the fame

Henry

Henry says, that the said *Thomas Franklyn* and *Mary* his wife, on the day of the issuing of the original writ of the said *Henry Clitheroe*, to wit, on the 22d day of *April* in the 3d year of the reign of the lord *James* the second, the late king, were tenants as of the freehold of the tenements aforesaid with the appurtenances, as the same *Henry Clitheroe* by his writ aforesaid above supposes: And this he prays may be inquired of by the country, &c.

Demurrer in bar.

And the said *Thomas* and *Mary* say, that the plea of the said *Henry* above in replying pleaded, and the matter in the same contained, are not sufficient in law for the said *Henry* to maintain his said action against them the said *Thomas* and *Mary* had, and that they to that plea in manner and form aforesaid have no necessity nor are by the law of the land bound to answer: And this they are ready to verify: Wherefore for want of a sufficient replication in this behalf the same *Thomas* and *Mary* pray judgment, and that the said *Henry* may be precluded from his action aforesaid had, &c.

Continuance.

And the said *Henry*, for that he hath in replying above alledged sufficient matter in law to maintain his writ aforesaid, which he is ready to verify, which said matter the said *Thomas* and *Mary* do not deny, nor thereto any way answer, but the averment aforesaid altogether refuse to admit, prays judgment, and that his writ aforesaid may be adjudged good, and seisin of the tenements aforesaid, with the appurtenances, may be adjudged to him, &c. And because the justices here will advise themselves of and upon the premisses before they give judgment thereon, a day is given the parties aforesaid here until in the morrow of the Holy *Trinity* to hear their judgment thereon, because the same justices thereof not yet, &c. At which day here come as well the said *Henry* as the said *Thomas* and *Mary* by their attorneys aforesaid; and upon this the premisses being seen, and by the justices here more fully understood, it seems to the same justices here, that the said *Henry* hath above in replying alledged sufficient matter in law to maintain his writ aforesaid: Wherefore it is said by the court here to the said *Thomas* and *Mary*, that they farther answer the said *Henry* to his writ and count aforesaid, &c. And upon this the said *Thomas* and *Mary* defend his right when, &c. and say, that the said *Henry* ought not to have his action aforesaid against them, because they say, that long before the said *Christopher* had any thing to do in the tenements aforesaid with the appurtenances, one *Bryan Edlyn* was seised of and in the tenements aforesaid, with the appurtenances, his demean as of fee, and he being so thereof seised a certain fine was levied in the court of the lord *James* the first, late king of *England*, at *Westminster*, to wit, in the octave of the purification of the blessed *Mary* in the year of the reign of the said king *James* the first of *England*, *France* and *Ireland*, 7th, and of *Scotland* 43d, before *E. Coke*, *T. Walmsly*, *P. Warbutton*, *W. Daniel* and *T. Foster*, justices and others the faithful subjects

[94]

Judgment to answer over.

Plea in chief.

Seisin in fee.

Fine levied.

him the late king then there present, between the said *Christopher*, by the name of *Christopher Clitheroe*, plaintiff, and the said *Bryan* and *Margaret* then his wife, deforceants of the tenements aforesaid with the appurtenances, by the name of one *Thames*, four cottages, five barns, four gardens, four orchards, 4 acres of land and six acres of wood, with the appurtenances in *Pynnor*, whereof a plea of covenant was summoned between them in the same court, to wit, that the said *Brian* and *Margaret* acknowledged the said tenements, with the appurtenances, to be the right of the said *Christopher*, as that which the said *Christopher* had of the gift of the said *Brian* and *Margaret*; and that they released and quitted claim from them the said *Brian* and *Margaret* and their heirs to the said *Christopher* and his heirs for ever: And farther the same *Brian* and *Margaret* granted warrant to the said *Christopher* and his heirs the said tenements with the appurtenances, against the said *Brian* and *Margaret* and the heirs of the said *Brian* for ever: Which said fine so had and levied was had and levied to the use of the said *Christopher* and *Mary* then his wife for the term of their lives and the life of the longer liver of them, and from and after their decease, to the use of the heirs male of the body of the said *Christopher* on the body of the said *Mary* begotten or to be begotten; and for want of such heirs male, then to the use of the heirs of the body of the said *Christopher* begotten or to be begotten; and for want of such issue, then to the use of the right heirs of the said *Christopher*: By virtue of which fine, and by force of the statute for transferring uses into possession, to wit, at *Harrow on the Hill* aforesaid in the county aforesaid, the said *Christopher* and *Mary* were seised of and in the tenements aforesaid with the appurtenances, for the term of their lives and the life of the longer liver of them, the remainder thereof to the heirs male of the body of the said *Christopher*, on the body of the said *Mary* begotten, the remainder thereof as aforesaid: And afterwards, to wit, on the 18th day of November in the 17th year of the reign of the lord *Charles* the first, late king of *England*, at *Harrow on the Hill* aforesaid the said *Christopher* of such his estate died seised, and the said *Mary* survived him and kept herself in; and afterwards, to wit, the 7th day of *March* in the year of the Lord 1648, the same *Mary* at *Harrow on the Hill* aforesaid died thereof of such of her estate seised; after whose death the tenements aforesaid, with the appurtenances, descended to one *Christopher Clitheroe* as son and heir male of the body of the said *Christopher* the grandfather, by him on the body of the said *Mary* begotten, which said *Christopher* the son into the tenements aforesaid with the appurtenances entered, and was thereof seised in his demean as of fee-tail by virtue of the gift aforesaid; and afterwards, to wit, on the 20th day of *April* in the year of the Lord 1655, the same *Christopher* at *Harrow on the Hill* aforesaid of such his estate therein died seised,

The uses;

Seisin by virtue
of the statute of
uses.Tenant for life
died seised.

Descent in tail.

seised, and from that *Christopher* descended the same tenements with the appurtenances, to one *Thomas Clitheroe* as son and heir of the said *Christopher* the son, which said *Thomas* into the tenements aforesaid with the appurtenances entered, and was thereof seised in his demean as of fee-tail by virtue of the gift aforesaid: and afterwards, to wit, on the 2d day of November in the year of the Lord 1681, the said *Thomas* at *Harrow on the Hill* aforesaid of such his estate therein died seised without heir male from his body issuing, and from the said *Thomas* descended the same tenements, with the appurtenances, to one *Christopher Clitheroe* as brother and heir of the said *Thomas*, which said *Christopher* the brother into the tenements aforesaid with the appurtenances entered, and was thereof seised in his demean as of fee-tail by virtue of the gift aforesaid; and afterwards, to wit, on the 22d day of October in the year of the Lord 1686, at *Harrow on the Hill* aforesaid the same *Christopher* the brother of such estate therein died seised without heir male from his body issuing, and from that *Christopher* descended the tenements aforesaid, with the appurtenances, to one *James Clitheroe*, as cousin and heir male of the body of *Christopher* the grandfather on the body of the said *Mary* begotten, to wit, son and heir of *James Clitheroe* who was son of the said *Christopher* the grandfather, by the same *Christopher* the grandfather on the body of the said *Mary* begotten, which said *James* the son into tenements aforesaid with the appurtenances entered, and was thereof seised in his demean as of fee-tail by virtue of the gift aforesaid; and the same *James* being so thereof seised, afterwards, and before the issuing of the writ aforesaid, a certain fine was levied in the court of the lord *James* the second, late king of England, at *Westminster*, to wit, from the day of St. Martin fifteen days, in the second year of the reign of *James* the second, by the grace of God of England, Scotland, France and Ireland king, defender of the faith, &c. before *Henry Beddingfield*, *T. Street*, *E. Lutwyche* and *J. Powell*, justices and other faithful subjects of the said late king then there present, between the said *Thomas Franklyn* and *Mary* his wife, plaintiffs and the same *James Clitheroe* the son, deforcient of the tenements aforesaid, by name of two messuages, forty acres of land fifty acres of meadow, forty acres of pasture and ten acres of wood, with the appurtenances, in *Harrow on the Hill*, where of a plea of covenant was summoned between them in the same court, to wit, that the same *James* acknowledged the said tenements, with the appurtenances, to be the right of the said *Thomas*, as those which the said *Thomas* and *Mary* had of the gift of the said *James*, and them he released and quitted claim from him the said *James* and his heirs to the same *Thomas* and *Mary* and the heirs of the said *Thomas* for ever: And farther the said *James* granted for himself and his heirs, that he would warrant to the said *Thomas* and *Mary*, and the heirs of the said *Thomas*, the tenements aforesaid, with the appurtenances, against

Another fine
levied.

[95]

him the said *James* and his heirs for ever; which said fine so as aforefaid levied, was had and levied to the use of the same *Thomas* and *Mary* for the term of their lives, and after their decease to the use of the same *Thomas* and his heirs for ever, to wit, at *Harrow on the Hill* aforefaid; by virtue of which fine, and by force of the statute for transferring uses into possession, the same *Thomas* and *Mary* were seised of the tenements aforefaid, with the appurtenances, for the term of their lives; without that, that the said *Christopher* the grandfather died seised of the tenements aforefaid, with the appurtenances, in his demesne as of fee, in manner and form as the said *Henry* hath above alledged: And this they are ready to verify: Wherefore they pray judgment if the said *Henry* ought to have his said action against them, &c.

The uses.

Seisin.

Traverse of the
aying seised of
the grandfather.

And the said *Henry* as before says, that *Christopher* the grandfather of the said *Henry* died seised of the tenements aforefaid, with the appurtenances, in his demesne as of fee, in manner and form as the same *Henry* above in declaring hath alledged; and this he prays may be inquired of by the country; and the said *Thomas* and *Mary* likewise: Therefore the sheriff is commanded that he cause to come here in the octave of the purification twelve, &c. by whom, &c. to recognize, &c. because as well, &c.

Issue upon the
traverse.

At which day the jury between the parties in the plea aforefaid was put therein between them in respite here until from the day of the *Holy Trinity* in 15 days then next following, unless *Henry Pollexfen*, knt. chief justice of the lord and lady the king and queen of the bench here, assigned by form of the statute, &c. on *Friday* the 14th day of *February*, at *Westminster* in the hall there commonly called *Westminster hall*, shall first come: And now here at this day come the said *Thomas Franklyn* and *Mary* his wife by their attorney aforefaid: And the said chief justice before whom, &c. sent here his record before him had in these words: Afterwards the day and year within contained before *Henry Pollexfen*, knt. chief justice of the lord the king of the bench, *A. B.* gent. being associated to him by the form of the statute, &c. come as well the within named *Henry Clitheroe*, as the within written *Thomas Franklyn* and *Mary* his wife by their attornies within contained: And the jurors of the jury, whereof mention is within made, being called likewise come, who to say the truth of the within contained being elected, tried and sworn, say upon their oaths, that the within named *Christopher*, the grandfather of the said *Henry*, did not die seised of the tenements within written, with the appurtenances, in his demesne as of fee, as the same *Henry* within by replying hath alledged: Therefore it is considered, that the said *Henry Clitheroe* take nothing by his writ, but be in mercy for his false suit, and that the said *Thomas Franklyn* and *Mary* go hence without day, &c.

The entry of the
Jurata.

13 E. 1. c. 30.

12 E. 2. c. 4.

14 E. 3. c. 16.

The *Poffea*.Verdict for re-
nants.Judgment,
Mercy.

Pleas at Westminster before Henry Pollexfen, knt. and his companions justices of the lord and lady the king and queen of the bench, of Hillary term in the first year of the reign of the lord and lady William and Mary, now king and queen of England, &c.

The Jurats.

Midd', to wit. THE jury between *Henry Clitheroe, esq;* demandant, and *Thomas Franklyn, esq;* and *Mary* his wife, in a plea of land is put in respite here until from the day of the Holy Trinity in 15 days, unless *Henry Pollexfen, knt.* chief justice of the lord and lady the king and queen of the bench here assigned by form of the statute, &c. on Friday the 14th day of February, at Westminster in the hall there, commonly called *Westminster-hall* in the county aforesaid, shall first come for want of jurors, because none come, therefore let the sheriff have the bodies, &c. And be it known, that the justices here in court this same term have delivered the writ thereof to *John Cooke, esq;* the deputy sheriff of the county aforesaid, in form of law to be executed, &c.

[96]

Arbitrement.

How to plead an award; with much useful learning on that subject. Pract. Reg. 165, 171. 1 Salk. 69, 72, 67.

Arbitration bond.

KNOW all men by these presents, That *J. Joseph B.* of, &c. am held and firmly bound to *John W.* of, &c. in 1701. &c. and in the year of the Lord 1720. The condition of this obligation is such, That if the above bounden *Joseph B.* his heirs, executors and administrators, and every of them, do and shall for his and their part and behalf well and truly in all things stand to, obey, abide, perform, fulfil and keep the award, order, arbitrement, end and final determination of *Daniel D.* of *Hackney* aforesaid, esq; *J. C.* of the same, esq; and *C. W.* of the same, esq; or any two of them, arbitrators indifferently elected and named, as well on the part and behalf of the above-bounden *J. B.* as of the above-named *J. W.* to arbitrate, award, order, judge and determine of and concerning all and all manner of action and actions, cause and causes of action, suits, quarrels, controversies, trespasses, damages and demands whatsoever, at any time heretofore had, moved, brought, commenced, sued, prosecuted, done, suffered

suffered, committed or depending, by and between the said parties, or either of them, so as the said award be made by the said arbitrators or any two of them, and ready to be delivered to the parties in difference, or such of them as shall desire the same on or before the 14th day of *February* next, then this obligation to be void, else to remain in full force and virtue. And it is also agreed by and between the said *J. B.* and *J. W.* that this submission to the said award so to be made as aforesaid shall be made a rule of his majesty's court of king's bench at *Westminster*, pursuant to the late act of parliament for that purpose.

& 10 W. 3.
c. 15.

Affidavit of the execution of the arbitration bond.

J. T. of *London*, gent. maketh oath, That on or about the 28th day of *January* last past, he this deponent did see *J. B.* sign, seal, and as his act and deed deliver unto the said *J. W.* one bond or obligation, bearing date the said 28th day of *January*, with a condition thereto for the performance of an award to be made by *D. D.* of, &c. and *C. W.* of, &c. and *J. C.* of, &c. or any two of them, of all actions and demands whatsoever between them the said *J. W.* and *J. B.* And it was also thereby agreed by the said *J. B.* that the said submission to the award of the said arbitrators should be made a rule of his majesty's court of king's bench at *Westm'* pursuant to the act of parliament for that purpose. And this deponent farther saith, that the name of him this deponent subscribed as a witness thereto is the proper hand-writing of him this deponent.

[97]

Monday next after the morrow of the purification of the blessed Mary in the 7th year of king George.

The rule of court thereupon.

ON reading the oath of *J. T.* gent. and the bond and condition of the same, bearing date 28th day of *January* in the year of the Lord 1720, duly executed between the parties, it appears to the court here, that all and all manner of action and actions, cause and causes of action, suits, quarrels, controversies, trespasses, damages and demands whatsoever at any time before the date of the said bond had, moved, commenced, done, suffered, committed or depending by and between the said parties, or either of them, should be referred to the award and final determination of *D. D.* of *Hackney*, esq; *J. C.* of the same, esq; and *C. W.* of the same, esq; so as they publish their award in writing under their hands and seals on or before the 14th day of *February* next following the date of the said bond. And it farther appears to the court here, that the said parties have submitted and agreed that the said submission be made a rule of this court: It is therefore order'd, that the said submission in manner and form aforesaid made, according to the form and effect of the

Arbitrement.

statute in that behalf lately made and provided, be enter'd and made a rule of this court. *On the motion of Mr. Wearg.*

Rule of reference to serjeant Darnell made at the sittings in Middlesex.

IT is order'd, that the order made at the sittings held at *Westminster* in the great hall of pleas there on *Monday*, to wit, the first day of *February* in the first year of the reign of the lady *Anne*, now queen of *England*, &c. before *John Holt*, knt. chief justice of the said lady the queen assigned to hold pleas in the court of the said lady the queen before the queen herself, be enter'd and made a rule of this court, which said order follows in these words: It is order'd by the assent of the parties, their counsel and attornies, that the matters in difference between the said parties in this cause shall be referred to the award and final determination of *John Darnell*, knt. one of the serjeants at law of the lady the queen, so that he publish his award before the first day of next term, and that neither the said plaintiff nor the said defendant shall commence any suit in the court of chancery, or in any other court of equity, against the said arbitrator for or concerning his arbitratorship in this cause.

On the motion of Mr. Carthew.

By the court.

His award thereupon.

HAVING heard the parties fully to the matters in difference between them referred to me by the rule of court within written, I do award, that the defendant do pay to the plaintiff the sum of 36 l. 10 s. at the chamber of Mr. *John Lilly* in *Clifford's Inn*, *London*, between the hours of ten and eleven in the morning of the sixth day of this instant *March*, and that upon the payment thereof each party shall execute to the other a release under their several hands and seals of all matters in difference between them in the said cause. *In Witness* whereof I have hereunto set my hand the first day of *March* 1720.

John Darnell.

An award made by three foremen of the jury pursuant to a rule of reference at nisi prius.

WHEREAS at a sitting of *nisi prius* held at the *Guild-hall* of the city of *London* before Sir *Thomas Parker*, knt. lord chief justice of his majesty's court of king's bench at *Westminster* the 15th day of *February* last, a cause came on to be tried, wherein *Henry Brook* the younger was plaintiff, and *John Taylor* defendant, and on such trial, by consent of the said parties, their counsel and attornies, an order of rule was then made, that the said

said cause, and all other differences whatsoever between the said parties, should be referred to *Jeremiah Marlow*, *Joseph Brandon*, and *Samuel Gibson*, the three foremen of the jury impanelled and sworn to try the said cause, or any two of them, to hear and determine all the said matters and differences, so as the said *Jeremiah Marlow*, *Joseph Brandon*, and *Samuel Gibson*, or any two of them, should make and publish their award in writing on or before the first day of the next term: Now we the said *Jeremiah Marlow*, *Joseph Brandon*, and *Samuel Gibson*, in pursuance of the said rule or order of reference, having thoroughly examined and considered the matters to us referred, as aforesaid, do award and order of and concerning the premisses in manner and form following:

Imprimis, We do award and order, that the said *John Taylor* shall well and truly pay, or cause to be paid, unto the said *Henry Brook* the sum of 94 *l.* of good and lawful money of *Great Britain* on the sixteenth day of *May* next at the house of *Mr. Batson*, situate in *Cornhill*, *London*, commonly called or known by the name of *Batson's Coffee-house*, between the hours of ten and twelve of the clock in the forenoon of the same day.

Item, We do award and order, that the said *Henry Brook* shall upon payment of the said sum of 94 *l.* execute to the said *John Taylor* a general release of all actions and demands until the said fifteenth day of *February* last: And also that the said *John Taylor* shall at the same time execute to the said *Henry Brook* the like release. *In Witness* whereof we have hereunto set our hands and seals this 27th day of *April* in the first year of the reign of our sovereign lord *George*, by the grace of God of *Great Britain*, *France* and *Ireland* king, defender of the faith, &c. *Anno Domini* 1715.

Interrogatories to be administered to John Taylor in his majesty's court of king's bench, concerning a contempt supposed to be committed by him against the said court.

Imprimis, Was you any time (and when) served with or had delivered to you a rule or paper writing, purporting to be a rule of his majesty's court of king's bench, or copy thereof? and what were the contents of the said rule or paper writing, and copy thereof; was the same to the effect, or of the tenor following; that is to say, *Die jovis prox' post quinden' paschæ anno primo Georgii Regis, Brook versus Taylor ordinat' est quod ordo fiat* (so insert the rule verbatim) to *per Cur'*. Who served the said rule or paper writing upon you, or delivered it, or copy thereof, to you? Did the person who served the said rule or paper writing upon you then acquaint you with the contents thereof, and deliver you a copy thereof? What was the tenor, purport or meaning of the said rule or paper writing so shown or delivered unto you, as you then understood, or have been since informed? By whom, and about what time, when, and by

Interrogatories exhibited on a attachment of contempt in not performing an award.

whom, were you first acquainted with the contents of the said rule or paper writing, and did you know thereof? What did you then, or at any time before or since, say whether you would or would not pay the money mentioned in the award mentioned in that rule of court? Have you not declared you would never pay the said money, or perform the said award, and what have you at any time, and when, said, either before or after the service of the said rule, as to your refusing or not paying the said money, or not performing the said award? Declare the truth of all and every the matters inquired of you by this interrogatory.

[99]

Item, Do you know of any, and what award, at any time, and when made, by any, and what person or persons, in pursuance of the said rule inquired of by the preceding interrogatory? Were the names of the persons or arbitrators that made such award *Jeremiah Marlow*, *Joseph Brandon*, and *Samuel Gibson*, or what other name or names were they known or called by, and what was the tenor of such award? Was it to the tenor following? that is to say, Whereas at a sitting of *nisi prius* (so insert the award *verbatim*.) When were you first, or at any other time, acquainted with such award? By any, and what person or persons was you at any time, and when, served with, or had delivered to you a copy of the said award inquired of by any, and what person or persons, and was you at any time, and when, required or desired by any, and what person or persons, to pay the sum of 94 *l.* in the said award mentioned, or any other, and what sum, to *Henry Brook* in the said award named, or to perform the said award? And did you at any time or times, and when, and how often, refuse or neglect to pay the said 94 *l.* to the said *Henry Brook*? Were you on the 16th day of *May* last at *Batson's Coffee-house*, *London*, in the said award mentioned, between the hours of ten and twelve of the clock with the said 94 *l.* ready to pay the same to the said *Henry Brook*; and if so, how long did you continue there with the said 94 *l.* to pay the same to the said *Henry Brook*, or have you at any time, and when, and where, and in whose presence, paid the said 94 *l.* to the said *Henry Brook*? Declare the truth of all and every the matters inquired of you by this interrogatory.

Item, Were you not served with a rule of court, the tenor whereof is as followeth, That is to say, (*and so insert the rule for the attachment*;) And when did you see, or receive, or had the copy thereof? And was the said 94 *l.* at any time, and when, demanded of you, and by whom, and why did you not pay the said 94 *l.* Declare the truth of all and every the matters inquired of you by this interrogatory.

Edward Whitaker.

Bar.

Drake and Bateman.

AND the said *Sarah Drake* by *John Lilly* her attorney comes and defends the force and injury when, &c. And says, that the said *Stephen Bateman* ought not to have or maintain his said action thereof against her, because she says, that *Thomas Morris*, gent. otherwise, to wit, in *Easter* term last past came before the lady *Anne*, now queen of *England*, &c. at *Westminster* by *T. M.* his attorney, and produced in the same court of the said lady the queen then there his certain bill against the said *Sarah Drake*, by the name of *Sarah Drake*, widow, executrix of the will of *Robert Drake* the younger, executor of *Robert Drake* the elder, in the custody of the marshal, &c. in a plea of breach of covenant, and there were then pledges to prosecute, to wit, *John Doe* and *Richard Roe*; by which said bill the said *Thomas Morris* complained against the said *Sarah Drake*, widow, as executrix of the will of *Robert Drake* the younger, executor of *Robert Drake* the elder, being in the custody of the marshal of the *Marshalsey* of the said lady the queen before the queen herself, for this, that whereas by certain articles of agreement in writing indented made the 17th day of *May* in the fourth year of the reign of the lord and lady *William* and *Mary* late king and queen of *England*, at *London*, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, between him the said *Thomas* and the said *Sarah*, by the names of *Thomas Morris* of the city of *Canterbury* in the county of *Kent*, gent. and *Sarah Morris* the eldest daughter of the said *Thomas Morris*, of the one part, and the said *Robert Drake* the elder and *Robert Drake* the younger, by the names of *Robert Drake* the elder of the town of *Cambridge* in the county of *Cambridge*, gent. and *Robert Drake* the younger of the town of *Cambridge* aforesaid, the eldest son and heir apparent of the said *Robert Drake* the elder, of the other part; one part of which said articles sealed with the seal of the said *Robert Drake* the elder the same *Thomas* then produced in court, the date whereof was the same day and year, reciting, that whereas a marriage was intended by the grace of God then shortly to be had and solemnized between the said *Robert Drake* the younger and the said *Sarah Morris*, in consideration whereof by the same articles it was mutually covenanted, concluded and agreed, by and between the said parties to the said articles in manner and

Bar by judgment
in covenant on
marriage articles
pleaded by an
executrix to do
on several books
Pract. Reg. 2
295.

form in the same articles following : And first the same *Thomas Morris* by the same articles for himself, his heirs, executors and administrators, did covenant, promise and agree to and with the said *Robert Drake* the elder, his executors and administrators, that he the said *Thomas Morris*, his heirs, executors or administrators, within twelve months next after the said intended marriage should take effect, would well and truly pay, or cause to be paid, to the said *Robert Drake* the elder, his executors, administrators or assigns, the full and just sum of 3000*l.* of good and lawful money of *England* for the full marriage portion of the said *Sarah Morris* to and with the said *Robert Drake* the younger : In consideration whereof the said *Robert Drake* the elder for himself, his heirs, executors and administrators, did by the same articles covenant, promise and agree to and with the said *Thomas Morris*, his heirs, executors and administrators, that he the said *Robert Drake* the elder, within the like space of 12 months next after the solemnization of the said marriage, would well and faithfully convey, assign and settle, or cause to be conveyed, assigned and settled, at his own proper costs and charges, by good and sufficient conveyance and assurance in the law, as by the said *Thomas Morris* or his heirs, or by his or their counsel learned in the law, should be reasonably devised or advised and required, lands and tenements situated in the *Ips* of *Ely* and in the county of *Cambridge* aforesaid, of the clear yearly value of 200*l.* of lawful money of *England*, beyond and above all reprises (parliamentary taxes excepted) and free from all incumbrances, to the use of the said *Robert Drake* the younger and the said *Sarah* his then intended wife, for the jointure of the said *Sarah*, and to and for such use and uses, and for such estate and estates, as was or were in the said articles after mentioned limited and appointed, to wit, to the use and behoof of the said *Robert Drake* the younger and *Sarah* his wife, in case the said intended marriage should take effect, for and during the term of their natural lives and the life of the longer liver of them the said *Robert* and *Sarah*; then to the use of trustees to preserve the contingent remainders in the said articles after limited; the remainder to the first son of the body of the said *Robert Drake* the younger on the body of the said *Sarah* to be begotten, and the heirs male of the body of such first son lawfully to be begotten, with the like remainders to the second, third and every other son; and for want of such heirs male, then to all and every the daughter and daughters of the body of the said *Robert Drake* the younger on the body of the said *Sarah* to be begotten, equally to be divided between them, and to take as tenants in common and not as jointenants, and to the several and respective heirs of their bodies lawfully begotten, the remainder to the right heirs of the said *Robert Drake* the younger : And farther, that the said *Robert Drake* the elder, his heirs, executors or administrators, at his proper costs and charges in the like manner and at the same time would well and

sufficiently

sufficiently settle, convey and assure other lands and tenements, situate in the *Isle of Ely* and in the county of *Cambridge* aforesaid, of the clear yearly value of 200*l.* of lawful money of *England* beyond and above all reprises (parliamentary taxes excepted) and free from all incumbrances beside the lands and tenements in the said articles before mentioned, to such use and uses and for such estate and estates as in the said articles were then next after mentioned, that is to say, as to 100*l.* a year, part or parcel of the said last mentioned 200*l.* a year, to the use and behoof of *Sarah* then the wife of the said *Robert Drake* the elder, for and during the term of her natural life, and from and after the decease of the said *Sarah*, to the use and behoof of the said *Robert Drake* the younger and *Sarah* his wife, in case the said intended marriage should take effect, for and during the term of their natural lives and the life of the longer liver of them the said *Robert* and *Sarah*, for the augmentation of the jointure of the said *Sarah*; and from and after the decease of the longer liver of them, then to the heirs of the body of the said *Sarah* by the said *Robert Drake* the younger lawfully begotten or to be begotten, and for want of such issue then to the right heirs of the said *Robert Drake* the younger for ever: And as to the remaining 100*l.* a year (other part of the last mentioned 200*l.* a year) to the use and behoof of the said *Robert Drake* the elder for and during the term of his natural life; and from and after his decease, to the use and behoof of the said *Robert Drake* the younger for and during the term of his natural life, and then to trustees to preserve the contingent remainders in the said articles after limited; the remainder to the first son of the body of the said *Robert Drake* the younger on the body of the said *Sarah* to be begotten, and to the heirs male of the body of such first son, with the like remainders to the second, third and every other son; and for want of sons, then to the daughter and daughters of the body of the said *Robert Drake* the younger on the body of the said *Sarah* to be begotten, equally to be divided between them, and to take as tenants in common and not as jointenants, and to the several and respective heirs of their bodies lawfully to be begotten; the remainder to the right heirs of the said *Robert Drake* the younger, as by the said articles more fully appears: And the said *Thomas Morris* then in fact said, that after the making the said articles, to wit, on the first day of *July* in the 4th year of the reign of the said late king and queen aforesaid, at *London* aforesaid in the parish and ward aforesaid, the marriage between the said *Robert Drake* the younger and the before named *Sarah* the daughter of the said *Thomas* was duly and lawfully had and solemnized; and that afterwards, to wit, on the 1st day of *August* in the 4th year aforesaid, the said marriage portion of the said *Sarah* of 3000*l.* by him the said *Thomas* to the said *Robert Drake* the elder was fully paid and satisfied, to wit, at *London* aforesaid in the parish and ward aforesaid: And the same *Thomas Morris*

[102]

Imparlance.

Nil dicit.

Award of a writ
of inquiry.

The inquisition.

Morris then farther in fact said, that the said *Robert Drake* the elder, his heirs, executors or administrators, at any time after the solemnization of the marriage aforesaid between the said *Robert Drake* the younger and the said *Sarah*, had not settled, conveyed or assured, nor had any of them settled, conveyed or assured, any other lands or tenements in the said *Isle of Ely* and in the county of *Cambridge*, or elsewhere, of the yearly value of 200*l.* or any part thereof, (over and beside the said lands and tenements in the said articles first mentioned) to the use and uses, and for the estate and estates, which in the said articles in that behalf were limited, expressed and mentioned, according to the form and effect of the articles aforesaid: And so the same *Thomas Morris* said, that the said *Robert Drake* the elder in his life-time, and the said *Robert Drake* the younger after the death of the said *Robert Drake* the elder, and the said *Sarah* after the death of the said *Robert Drake* the younger, although often required, had not performed his covenant, nor had any of them performed it, but had broke the same, and the said *Sarah* did deny to perform it to him, to the damage of the said *Thomas* as he said 5000*l.* And therefore he then produced the suit, &c. To which said declaration the said *Thomas* then prayed that the said *Sarah* might answer: And thereupon a day was given to the parties aforesaid until *Wednesday* next after a month of *Easter* then next following, to wit, to the said *Sarah* to imparl, and then to answer, &c. At which day before the said lady the queen at *Westminster* came the said *Thomas Morris* by his attorney aforesaid; and the said *Sarah Drake*, although on the same day solemnly called, did not come, nor any thing say in bar or preclusion of the action of the said *Thomas* aforesaid, whereby the same *Thomas* remained against the said *Sarah* therein undefended; wherefore the said *Thomas* ought to recover his damages against the same *Sarah* by reason of the premises: And because it was unknown to the court of the said said lady the queen then there, what damages the said *Thomas* had sustained by reason of the premises aforesaid, the sheriffs of *London* were commanded, that by the oaths of good and lawful men of their bailiwick they should diligently inquire what damages the said *Thomas* had sustained, as well by reason of the premises, as for his costs and charges by him about his suit in that behalf expended; and should send the inquisition which they should take thereon, together with the writ of the queen to them directed, to the said lady the queen at *Westminster* on *Monday* next after the morrow of the ascension of the Lord, under the seal, &c. and the seals, &c. The same day was given to the said *Thomas* there, &c. At which day before the said lady the queen at *Westminster* came the said *Thomas* by his attorney aforesaid: And the sheriffs of *London*, to wit, *James Bateman*, knt. and *William Withers*, knt. by virtue of the writ aforesaid to them for that purpose directed, returned a certain inquisition taken

taken before them by the oaths of 12 good, &c. at *Guild-hall* in the city of *London*, situate in the parish of *St. Lawrence* in the *Old Jewry* in the ward of *Cheape* of the same city, on the 16th day of *May* in the first year of the reign of the lady *Anne*, now queen of *England*, &c. whereby it was found that the said *Thomas* had sustained damages by reason of the premises aforesaid, besides his costs and charges by him about his suit in that behalf expended, to 2000*l.* and for those costs and charges to 26*s.* 8*d.* Therefore it was then considered, that the said *Thomas Morris* should recover against the said *Sarah* the damages aforesaid by the inquisition aforesaid in form aforesaid found, as also 6*l.* 13*s.* 4*d.* for his costs and charges aforesaid to the same *Thomas* by the said court by his assent of increase adjudged: Which said damages in the whole amount to 2008*l.* to be levied on the goods and chattels which belonged to the said *Robert Drake* the elder at the time of his death in the hands of the said *Sarah* to be administred, if she should have so much in her hands; and if she should not have so much in her hands, then the costs and charges aforesaid to be levied on the proper goods and chattels of the said *Sarah*, as by the record thereof in the said court of the said lady the queen before the queen herself at *Westminster* remaining more fully is manifest and doth appear: And the same *Sarah* farther says, that the articles aforesaid, upon which the said *Thomas Morris* in form aforesaid declared, were made for a good and real consideration of the marriage before-mentioned, and that after the marriage aforesaid the said sum of 3000*l.* was paid, upon the account of the marriage aforesaid in the articles aforesaid mentioned, by him the said *Thomas Morris* to him the said *Robert Drake* the elder, in manner and form as in the declaration aforesaid is mentioned; and that the judgment aforesaid yet remains in its full force and effect, not revoked, reversed, annulled or satisfied: And the same *Sarah* farther says, that she the said *Sarah* now defendant, after the death of the said *Robert Drake* the elder and *Robert Drake* the younger, hath fully administred all the goods and chattels which were of the said *Robert Drake* the elder at the time of his death in her hands to be administred, and that she hath not, nor on the day of the exhibiting of the bill aforesaid or ever after had, any goods or chattels which belonged to the said *Robert Drake* the elder at the time of his death, except goods and chattels to the value of 5*s.* which to the execution of the judgment aforesaid are chargeable and charged: And this she is ready to verify: Wherefore she prays judgment if the said *Stephen* ought to have or maintain his said action thereof against the said *Sarah*; with this, that the same *Sarah* will verify, that the said *Robert Drake* the elder, the testator in the judgment named, and the said *Robert Drake* the elder, the testator in the bill aforesaid of the said *Stephen* mentioned, are one and the same person, and not other nor divers.

Judgment of the
goods of the tes-
tator, if so
much.

P'ene adminis-
travit.

Averment.

St. John Brodrick.

AND

Bar that the persons died before
21.

AND the said *John Clay* by *John Lilly* his attorney comes and defends the force and injury, &c. And prays oyer of the writing obligatory aforesaid; and to him it is read, &c. He likewise prays oyer of the condition of the same writing; and to him it is read in these words Which being read and heard, the same *John Clay* says, that the said *Bonham* ought not to have or maintain his action aforesaid thereof against him, because he says, that after the marriage aforesaid, and before the said *John Haffenden* and *Richard Haffenden* attained, or either of them attained, to the age of 21 years, to wit, on the fourth day of *July* in the 35th year of the reign of the said late king *Charles* the second, they the said *John Haffenden* and *Richard Haffenden* at *London* aforesaid in the parish and ward aforesaid died: And this the same *John Clay* is ready to verify: Wherefore he prays judgment if the said *Bonham* his action, &c.

Demurrer in bar
to a declaration.

AND the said *John Sandford* by *Henry Gandy* his attorney comes and defends the force and injury, &c. And says, that the declaration aforesaid, and the matter therein contained, are not sufficient in law for the said *Joseph* to maintain his action aforesaid against the said *John* had, to which said declaration the same *John* hath no necessity, nor is by the law of the land obliged, any way to answer: And this he is ready to verify: Wherefore for want of a sufficient declaration of the said *Joseph* in this behalf, the same *John* prays judgment, and that the said *Joseph* may be precluded from his action aforesaid against him the said *John* had, &c. And for cause of demurrer in law the same *John Sandford*, according to the form of the statute, &c. doth set down, and to the court here expresses the causes following, to wit, that the said two several causes of action, to wit, of trespass and trespass on the case in the declaration aforesaid contained and above shewn do not lie together, nor ought to be contained in one and the same declaration; and that in the declaration aforesaid there are divers vacant spaces wanting words to signify and express the days, months, years and other things.

Special causes.
27 El. c. 5.
4 A. c. 16.

Blanks in the
declaration.
Pract. Reg.
435, 440.

Day given to the
plain int to join
in demurrer,
who made de-
fault and was
nonpross.

And upon this the same *John* prays that the said *Joseph* may join in demurrer with the same *John*, and thereupon day is given by the court of the said lord the now king here to the said *Joseph* before the lord the king at *Westminster*, until *Thursday* next after the octave of *St. Martin* from thence next following, to join with the same *John* in the demurrer in law aforesaid: And the said *Joseph* at the same day solemnly called does not come, nor farther prosecute his bill aforesaid against the said *Joseph*, but makes default: Therefore it is considered, that the said *Joseph* take nothing by his bill aforesaid, but that he and his pledges to prosecute, to wit, *John Doe* and *Richard Roe*, be for that in mercy: And the said *John* may go thereof without day, &c. And farther by the court of the said lord the king now here it is considered, that the said *John* do recover against the said *Joseph*

Judgment for
the defendant to

41. for

4*l.* for his costs and charges by him about his defence in this behalf sustained, to the same *John* by the court of the said lord the king, according to the form of the statute in such case lately made and provided, adjudged, &c. And the said *John* may have thereof execution, &c.

have costs. 23
H. 8. c. 15.
8 El. c. 2.

Midd', to wit. **T**HE sheriff is commanded that he take *Charles Browne* and *John Doe* if, &c. and them safely, &c. so that he may have their bodies before the lady the queen at *Westminster* on *Wednesday* next after three weeks of the Holy Trinity, to answer to *Richard Chifwell* in a plea of trespass, and also to the bill of the said *Richard* against the said *Charles* for 8*l.* 6*s.* 3*d.* upon promise, according to the custom of the court of the said lady the queen before the queen herself to be exhibited: And that he have there then this precept.

The entry of a bill of *Middlesex* on the roll to save the statute of limitations.

By bill.

Holt Coleman.

At which day before the lady the queen at *Westminster* comes the said *Richard* in his proper person, and offers himself against the said *Charles* in the plea aforesaid: And the sheriff of *Middlesex*, to wit, *Owen Buckingham*, knt. and *Edward Wills*, knt. return that the said *Charles* is not found in his bailiwick.

Enter'd Trin. 8 W. 3. Roll 2904.

[104]

AND the said *Richard* says, that he by any thing by the said *Charles* above in pleading alledged ought not to be precluded from his action aforesaid thereof against the said *Charles* had, because he says, that after the making of the promises and assumptions aforesaid in the declaration aforesaid above specified, and within six years next after the making of the same, and also before the day of the exhibition of the bill aforesaid, to wit, in Trinity term in the 8th year of the reign of the lord *William* the third, late king of *England*, &c. the same *Richard* for the recovery of his damages by reason of the non-performance of the promises and assumptions aforesaid then sustained, prosecuted against the said *Charles* out of the court of the said late king before the late king himself, the same court being then at *Westminster* in the county of *Middlesex*, a certain precept of the said late king, called a bill of *Middlesex*, at the suit of the said *Richard* to the then sheriff of the county of *Middlesex* directed; whereby the said sheriff was commanded, that he should take the said *Charles Browne*, if, &c. and him safely, &c. so that he should have his body before the said late king at *Westminster* on *Wednesday* next after three weeks of the Holy Trinity, to answer to the said *Richard Chifwell* in a plea of trespass, and also to the bill of the said *Richard* against the said *Charles Browne* for 8*l.* 6*s.* 3*d.* upon promise, according to the custom of the court of the said late king, before the late king himself to be exhibited, and that he should have there then that precept: The same day was given

Rep^d, that plaintiff sued out a bill of *Middlesex* to prevent the statute of limitations occurring.
21 Jac. c. 16.
Pract Reg. 531,
534, 172.

to the said *Richard* there, &c. which said precept the same *Richard* prosecuted to the intent that on the appearance of the said *Charles* in the same court, according to the custom of the court aforesaid, the same *Richard* might declare as well in the plea of trespass aforesaid, in the precept aforesaid mentioned, as in the plea of trespass on the case for the cause aforesaid, for which the same *Richard* hath above declared against him; which said precept afterwards, and before the return of the same, to wit, on the 22d day of *June* in the 8th year of the said late king aforesaid, at *London* aforesaid in the parish and ward aforesaid, to *Owen Buckingham*, knt. and *Edward Willis*, knt. then sheriff of the county of *Middlesex* aforesaid, was delivered in form of law to be executed; on which said *Wednesday* next after three weeks of the Holy *Trinity*, before the said late king at *Westminster*, came the said *Richard Chiswell* in his proper person, and offer'd himself against the said *Charles Browne* in the plea aforesaid; and the said sheriff of the county of *Middlesex* returned, that the said *Charles* is not found in his bailiwick; and the same *Charles* did not come; whereupon the said *Richard* afterwards, to wit, in the same *Trinity* term in the 8th year aforesaid, prosecuted out of the same court of the said late king before the said late king himself, the same court then likewise being at *Westminster* aforesaid in the county of *Middlesex* aforesaid, a certain other precept at the suit of the said *Richard* against the said *Charles* directed to the then sheriff of the county of *Middlesex* aforesaid, whereby the said sheriff was as before commanded, that he should take the said *Charles* if, &c. and him safely, &c. so that he might have his body before the said late king at *Westminster* on *Friday* next after three weeks of *St. Michael*, to answer to the said *Richard Chiswell* in a plea of trespass, and also to the bill of the said *Richard* against the said *Charles* for 8*l.* 6*s.* 3*d.* on promise, according to the custom of the court of the said late king, before the late king himself to be exhibited, and that he should have there then that precept: The same day was given to the said *Richard* there, &c. Which said precept the same *Richard* prosecuted to the same intent above recited, and which said precept the same *Richard* afterwards, and before the return thereof, to wit, on the 10th day of *October* in the 8th year aforesaid, at *London* aforesaid in the parish and ward aforesaid, to *John Woolfe*, knt. and *Samuel Blewit*, knt. then sheriff of the county of *Middlesex* aforesaid, delivered in due form of law to be executed: On which *Wednesday* next after three weeks of *St. Michael*, before the said late king at *Westminster*, came the said *Richard Chiswell* in his proper person, and offered himself against the said *Charles* in the plea aforesaid, and the said sheriff of the county of *Middlesex* did not return that last mentioned precept, nor did any thing therein: Therefore, as before, the said sheriff of the county of *Middlesex* aforesaid was commanded that he should take the said *Charles*, if, &c. and him safely, &c. so that he might have his body before the said late king at *Westminster* on *Saturday* next after the octave of

of *St. Hillary*, to answer to the said *Richard Chiswell* in a plea of trespass, and to the bill aforesaid: The same day was given to the said *Richard* there, &c. before which day the said late king *William* the third departed this life: And on the same day the process on the precept aforesaid, and the plea of the process last mentioned, was adjourned by writ of the lady *Anne*, now queen of *England*, &c. of common adjournment before the same lady the queen at *Westminster*, until from the day of *Easter* in three weeks from thence next following: On which day from *Easter* in three weeks before the said lady *Anne*, now queen of *England*, &c. at *Westminster* came the said *Richard* in his proper person, and offered himself against the said *Charles* in the plea aforesaid, and the sheriff did not return the precept last mentioned, nor did any thing therein; and the said *Charles* did not come: Therefore, as before, the sheriff was commanded that he should take the said *Charles*, if, &c. and him safely, &c. so that he should have his body before the said queen at *Westminster* on next after to answer to the said *Richard* in the plea and bill aforesaid: The same day was given to the said *Richard* there, &c. At which day before the said lady the queen at *Westminster* came the said *Richard* in his proper person, and offered himself against the said *Charles* in the plea aforesaid, and the sheriff did not return the precept last mentioned, nor did any thing therein; and the said *Charles* did not come: Whereupon on the behalf of the said *Richard*, in the said court of the said lady the queen before the queen herself, on the same day it was sufficiently attested, that the said *Charles* did run up and down and secrete himself in the county of *Suffolk*: Therefore the sheriff of the county of *Suffolk* aforesaid was then and there commanded that he should take the said *Charles*, if he should be found in his bailiwick, and safely keep him, so that he might have his body before the said lady the queen at *Westminster* on *Wednesday* next after fifteen days of *St. Martin* from thence next following, to answer to the said *Richard* in the plea and bill aforesaid, and that he should have there then that writ: The same day was given to the said *Richard* there, &c. At which day before the said lady the queen at *Westminster* came the said *Richard* by *John Allen* his attorney, and the sheriff did not return the writ, nor did any thing therein; but the said *Charles* by *Edward W.* his attorney at the same day likewise came, and in the same court here appeared at the suit of the said *Richard* in the plea aforesaid: And thereupon the same *Richard* against the said *Charles* for the said cause of action in the declaration aforesaid above mentioned in the same court of the said lady the queen before the queen herself, to wit, at *Westminster* aforesaid in the county of *Middlesex* aforesaid, in the said *Michaelmas* term in the fourth year of queen *Anne* aforesaid, by his bill aforesaid declared in manner and form aforesaid: And the same *Richard* farther says, that the said *Charles* within six years next before the prosecution of the said precept, called a bill of *Middlesex* above mentioned, at *London* aforesaid in the parish and ward

Demise of the king.

[105]

Laritat sued out

Promised within 6 years before the bill of *Middlesex*.

ward aforesaid, did assume upon himself in manner and form as the said *Richard* above against the said *Charles* thereof complains: And this he is ready to verify: Wherefore he prays judgment and his damages by reason of the non-performance of the promises and assumptions aforesaid to be adjudged to him, &c.

Tbo. Pengelly.

That he delivered 100 hogheads of tobacco in satisfaction.

6 Rep. 34.
Pract. Reg. 13,
15. Dy. 1.
2 Ro. Rep. 96.
Raym. 450.
2 Jon. 158, 168.
2 Keb. 332.
9 Co. 80. b.
Stile 215.
5 Co. 44. a.
6 Co. 43.

WHEN, &c. And says, that the said *John* ought not to have or maintain his action thereof against him, because he says, that well and true it is that he did assume upon himself in manner and form as the said *John* against him hath declared; but the said *Joseph* farther says, that after making of the several promises and assumptions in the declaration aforesaid above supposed to be made, to wit, on the 4th day of *September* in the fifth year of the reign of the lord *Gsorge*, now king of *Great Britain*, &c. at *London* aforesaid in the parish and ward aforesaid, he gave and delivered to the said *John* 100 hogheads of tobacco, in full satisfaction and discharge of the several promises and assumptions aforesaid, and of all the money therein mentioned; which said ten hogheads of tobacco the said *John*, in full satisfaction and discharge of the several promises and assumptions aforesaid, and of all the money in the same mentioned, from the said *Joseph* then and there had and received: And this he is ready to verify: Wherefore he prays judgment if the said *John* ought to have or maintain his action aforesaid thereon against him, &c.

W. Brainthwait.

Repl. that he did not deliver, and issue thereon.

And the said *John* says, that he ought not to be precluded from his action aforesaid by any thing by the said *Joseph* in pleading alledged, because he says, that the said *Joseph* did not give and deliver to the same *John* 100 hogheads of tobacco, in full satisfaction and discharge of the several promises and assumptions aforesaid, and of all the money in the same mentioned, in manner and form as the said *Joseph* hath alledged: And this he prays may be inquired of by the country: And the said *Joseph* likewise, &c.

Demurrer to the plea.

And the said *John* says, that the plea aforesaid by the said *James* in manner and form above pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *John* from his action aforesaid against him the said *Joseph* had, and that he the said *John* hath no necessity, nor is bound by the law of the land, in any way to answer to that plea in manner and form aforesaid pleaded: And this he is ready to verify: Wherefore for want of a sufficient plea in this behalf, the same *John* prays judgment and his damages by reason of the premisses aforesaid to be adjudged to him, &c. And for causes of demurrer in law in this behalf, according to the form of the statute in such case made, he sets down and to the court here expresses these

27 El. c. 5.
4 A. c. 16.

causes

causes following: Because the said *James* in his plea aforesaid hath alledged, that he gave and delivered to the said *John* 100 hogsheads of tobacco in full satisfaction and discharge of the several promises and assumptions aforesaid, and of all the money in the same mentioned; and afterwards hath alledged the acceptance in the words following, Which said ten hogsheads of tobacco the said *John*, in full satisfaction and discharge of the several promises and assumptions aforesaid, and of all the money in the same mentioned, from the said *Joseph* then and there had and received: And the said *John* farther says, that the plea aforesaid is inconsistent, incertain, not issuable, and wants form.

[106]

C. Wearg.

The defendants demur in law, because the same *Margaret* hath brought and prosecuted her action aforesaid against the same *Edward Thomas, &c.* in the county of the city of *London*, where by the law of the land the action aforesaid, for the rent aforesaid by the same *Margaret* in manner and form aforesaid prosecuted, ought to be brought and laid in the counties of *Essex* and *Middlesex*, or one of them; and also because the demise by the indenture in the declaration specified is not alledged precisely and affirmatively, but by way of relation and recital.

Causés of demurrer assigned after a general demurrer. 2 Ro. Rep. 330.

C. Wearg.

AND the said *Joseph* says, that the plea aforesaid by him the said *Joseph* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to preclude him the said *John* from his action aforesaid thereof against him the said *Joseph* had; which said plea, and the matter in the same contained, the same *Joseph* is ready to verify and prove, as the court, &c. And because the said *John Maubray* doth not answer that plea, nor any way hitherto deny it, the said *Joseph* prays judgment, and that the said *John Maubray* may be precluded from his action aforesaid thereof against him the said *Joseph* had, &c. But because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until next after to hear their judgment of and upon those premises, because the court of the said lord the king now here not yet, &c.

Joinder in demurrer to a plea in bar.

WHEN, &c. And prays judgment of the declaration aforesaid, because he says, that the declaration aforesaid, and the matter in the same contained, are not sufficient in law to maintain the action of him the said *Thomas* against him the said *Edward* had, to which the same *Edward* hath no necessity, nor is obliged by the law of the land, to answer: And this he is ready to verify: Wherefore for want of a sufficient declaration in this behalf, the said *Edward* prays judgment of that declaration, and that the same declaration may be quashed, &c. And for causes

Demurrer in abatement to a declaration in trespass.

27 El. c. 5.
4 A. c. 16.

of demurrer in law upon the declaration aforesaid, the same *Edward*, according to the form of the statute in such case lately made and provided, sets down and to the court here expresses these causes following, to wit, that no town, parish or place is alledged in the same declaration where the said *Edward* the close aforesaid broke or enter'd, and for that the same declaration is in itself repugnant, contradictory, and wants form, &c.

Tho. Booth.

White and Combes and others.

Imparlanee for
three defendants,
two plead *Non*
assumpsit.

AND now at this day, to wit, &c. next after, &c. in this same term, until which day the said *John Combes*, *John Foster* and *Charles Wilkinson*, had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* come as well the said *Elizabeth* by her attorney aforesaid, as the said *John C. F. F.* and *Charles Wilkinson* by *G. W.* their attorney: And the same *John Combes*, *Thomas Foster* and *Charles W.* defend the force and injury when, &c. And the said *J. C.* and *T. F.* say, that they did not assume upon themselves in manner and form as the said *Elizabeth* above against them complains: And of this they put themselves on the country: And the said *Elizabeth* thereof likewise, &c.

The 3d *Non assumpsit*;
and by leave of
the court.

And the said *Charles* says, that the said *Elizabeth* ought not to have or maintain her action aforesaid thereof against him, because he says, that he did not assume upon himself in manner and form as the said *Elizabeth* above against him complains: And of this he puts himself upon the country: And the said *Elizabeth* thereof likewise, &c.

[107]

Bankruptcy.
4 A. c. 16.
§ 4.

And the said *Charles* by leave of the court here, according to the form of the statute in such case lately made and provided, farther says, that the said *Elizabeth* ought not to have her action aforesaid thereof against him the said *Charles*, because he says, that he the said *Charles*, after the 24th day of *June* in the year of the Lord 1706, to wit, the 7th day of *September* in the 1st year of the reign of the lord *George* now king, &c. at *London* aforesaid in the parish and ward aforesaid, became a bankrupt within the several statutes made against bankrupts: And the same *Charles*, according to the form of the statute lately made and provided, farther pleads and says, that the said cause of action in the declaration aforesaid above specified accrued to the said *William* in his life-time, before the said time that he the said *Charles* so as aforesaid became a bankrupt: And of this he puts himself upon the country, &c.

Plaintiff confesses the bankruptcy, but says it was a joint contract.

And the said *Elizabeth*, as to the plea of the said *Charles* last pleaded, says that well and true it is, that the said *Charles* became a bankrupt in manner and form as the said *Charles* by the plea last mentioned hath alledged; but the same *Elizabeth* farther says, that he the said *Charles*, together with the said *John* and *Thomas*, did assume upon himself in manner and form as

the

the the said *Elizabeth* above thereof against them complains: And this she is ready to verify: And prays judgment and her damages by reason of the premisses to be adjudged to her, &c. And thereupon the same *Elizabeth* prays that the said *Charles* may rejoin to her last replication: Whereupon day is given to the said *Charles* before the lord the king at *Westminster* until Friday next after the octave of *St. Martin* from thence next following to rejoin, &c. On which day before the lord the king at *Westminster* comes the said *Elizabeth* by her attorney aforesaid: And the said *Charles* on the same day solemnly called does not come, but makes default, and nothing else thereto says in bar or preclusion of the action of the said *Elizabeth* aforesaid, whereby the same *Elizabeth* remains thereto against the said *Charles* as to the last plea undefended, &c. Therefore as well to try the several issues aforesaid between the said *Elizabeth* and the said *John C. J. Foster* and *Charles Wilkinson* above joined, as to inquire what damages the said *Elizabeth* by reason of the premisses aforesaid by the said *Charles W.* has sustained, if a verdict in the plea aforesaid shall happen to be given for the said *Elizabeth*; let a jury come before the lord the king at *Westminster* on Wednesday next after the octave of *St. Hillary*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid, &c.

Day given to that defendant to rejoin.

Who makes default.

A venire awarded as well to try the issue as to inquire of damages.

Judgment for the plaintiff, and affirmed on a writ of error in the exchequer chamber. Mich. 4 Geo. 1.

Silverlock and Thompson.

When, &c. And says that the said *John Thompson* ought not to have or maintain his said action thereof against him, because he says that he the same *James Silverlock*, at the time of making of the several promises and assumptions in the declaration aforesaid above specified, was under the age of 21 years: And this he is ready to verify: Wherefore he prays judgment if the said *John Thompson* ought to have or maintain his action aforesaid thereof against him, &c.

Nonage to an action for taylor's work. Pract. Reg. 57, 58.

And the said *John Thompson* says that he, by any thing by the said *James Silverlock* above in pleading alledged, ought not to be precluded from his action aforesaid against him the said *James* said, because he says, that the said 30^{l.} by the said *John* for the same *James* laid out and expended, and the said taylor's work by the same *John* done and performed, together with the materials and things necessary in and about that work used, and by the said *John* for the said *James* in form aforesaid found and provided, were laid out and expended, done and performed, found and provided for the necessary apparel and clothing of the body of the said *James*, his degree requiring the same: And this he

Replication, that they were necessary for defendant's degree.

is ready to verify: Wherefore he prays judgment and his damages aforesaid to be adjudged to him, &c.

Edw. Northey.

Rejoinder, that they were not necessary.

[108]

123c.

The statute 30 Anne, c. 20. pleaded in discharge of the defendant from an execution.

Must see the act.

And the said *James* says, that the said 30*l.* by the said *John* laid out and expended, and the said taylor's work by him the said *John* done and performed, together with the materials and things necessary in and about that work, and by the said *John* for the same *James* in form aforesaid found and provided, were not for the necessary apparel and clothing of the body of him the said *James* in manner and form as the said *John* above in replying thereto hath alledged: And of this he puts himself upon the country: And the said *John* thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on next after and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Fr. Pemberton.

WHen, &c. And prays oyer of the writing aforesaid; and to him it is read; he prays likewise oyer of the condition of the same writing; and to him it is read in these words, to wit, the condition of this obligation is such, &c. then this obligation to be void, or else to remain in full force. Which being read and heard, the same *John* says, that the cause of action aforesaid in the declaration aforesaid above-mentioned accrued to the said *Thomas* before the 7th day of *December* in the year of the Lord 1711, and that he cannot deny the action of the said *Thomas* aforesaid, nor but that he owes to the same *Thomas* the said 20*l.* in the form in which the same *Thomas* above thereof against him has declared: But the said *John* farther says, that the said *Thomas* ought not to have execution for his deb. aforesaid, or for any damages by reason of the detention of that debt, to be adjudged to him on the person of the said *John*, or of his wearing apparel, bedding for his family, and tools necessary for his trade or occupation; because he says, that he the said *John* on the said 7th day of *December* in the year of the Lord aforesaid, and before the same day, was actually a prisoner in the prison of the said lady the queen of *White Chapel* in the parish of *St. Mary Matfellan*, otherwise *White Chapel*, in the county of *Middlesex*, at the suit of one *Samuel Thompson*, a creditor of him the said *John*, in a plea of trespass on the case for a true and just debt from the said *John* to the said *Samuel* then due, and before the said 7th day of *December* in the year of the Lord aforesaid contracted; and that he the same *John*, according to the form of a certain act of parliament, made in a parliament of the said lady the now queen by several prorogations at *Westminster* in the county of *Middlesex* aforesaid, on the said 7th day of *December* in the 10th year of the reign of the said now queen held, intituled, an act for the relief of insolvent debtors

debtors by obliging their creditors to accept the utmost satisfaction they are capable to make, and restoring them to their liberty, at a general quarter-sessions of the peace of the said lady the now queen held by adjournment in and for the county of *Middlesex* aforesaid, at *Hicks's Hall* in the parish of *St. Sepulcher* in the county of *Middlesex* aforesaid, on the 17th day of *September* in the 11th year of the reign of the said lady the now queen, before *John Miller*, esq; and *John Richardson*, esq; and others their companions, justices of the said lady the queen, assigned to preserve the peace of the said lady the queen in and for the county of *Middlesex* aforesaid, was duly discharged and released from his imprisonment aforesaid: And this he is ready to verify: Wherefore the same *John* prays judgment, if the said *Thomas* ought to have his execution aforesaid on the person of him the said *John*, or of his wearing apparel, bedding for his family, and tools necessary for his trade or occupation, &c.

And the said *Thomas* says, that he by any thing before alledged ought not to be precluded from execution of his debt aforesaid and his damages, by reason of the detention of that debt, on the person of him the said *John* or of his wearing apparel, bedding for his family and tools necessary for his trade or occupation; because he says, that from the said 7th day of *December* abovementioned until his said discharge from the imprisonment aforesaid the same *John* did not remain or continue actually a prisoner in the prison aforesaid, but within the same time eloined himself from prison at *London* aforesaid in the parish and ward aforesaid; without that, that the said *John* was duly discharged from his imprisonment aforesaid, as by the plea aforesaid is above alledged: And this he is ready to verify: Wherefore he prays judgment and his debt aforesaid, together with his damages, to be adjudged to him, &c. as if the statute aforesaid had not been made.

And the said *John*, by protestation that he did not eloin himself from the prison aforesaid as the said *Thomas* above by replying hath alledged, for plea as before says, that he the same *John* was duly discharged from his imprisonment aforesaid, as by his plea aforesaid is above alledged: And of this he puts himself on the country, &c.

Repl. that he did not remain a prisoner.

Traverse of the discharge.

Issue on the traverse.

When, &c. And says, that the said *James Leigh* ought not to have or maintain his action aforesaid thereof against him, because he says, that after the said demise of the said four closes by the indenture aforesaid by the said *James* to the same *Tristram* and *Thomas Leigh*, as is aforesaid, made, and before the said rent of 7 l. 10 s. by the declaration aforesaid above demanded, or any part thereof, became due or in arrear, to wit, on the first day of *March* in the year of the Lord 1668, at *Moulbury* aforesaid in the county aforesaid, the same *Tristram* and *Thomas Leigh* assigned all their interest, estate and term of years of and in the closes aforesaid, with the appurtenances, to

[109]

That the defendant assigned over his interest but at any rent due.

them as aforesaid demised to one *Philip Leigh*, by virtue of which said assignment the same *Philip* was of the closes aforesaid for the residue of the term aforesaid possessed: whereof the said *James* afterwards, and before any part of the rent above demanded became due, to wit, on the fifth day of *November* in the year of the Lord 1669, at *Modbury* aforesaid in the county aforesaid had notice; and thereupon the said *Philip Leigh* then and there paid to the said *James Leigh* 6 s. 9 d. for the rent reserved and then in arrear, due and payable for the closes aforesaid, by virtue of the demise aforesaid, for three quarters of a year ended at the feast of *St. Michael* the Archangel then last past; which said 6 s. 9 d. in manner and form aforesaid paid the same *James Leigh* from the said *Philip Leigh*, as assignee of them the said *Tristram* and *Thomas*, for that rent then in arrear then and there received and accepted: And this the said *Tristram* is ready to verify: Wherefore, &c.

Conditions performed by payment of the taxes, and that the defendant surrendered the premises to R. J.

WHEN, &c. And prays oyer of the writing obligatory aforesaid; and to him it is read, &c. he prays likewise oyer of the condition of the same writing obligatory; and to him it is read in these words, to wit, The condition of this obligation is such, that whereas, &c. then this present obligation to be void and of none effect, or else to stand, remain, abide and be in full force, power, strength and virtue: Which being read and heard, the same *Francis* says, that the said *Thomas* ought not to have his action aforesaid against him, because he says, that he the said *Francis* on the said 20th day of *October* in 35th year of the reign of the said lord *Charles* the second, late king of *England*, &c. aforesaid, at *Bitton* aforesaid in the county aforesaid, paid and discharged all and all manner of taxes, dues and duties, which at the time of making of the writing obligatory aforesaid, or then before, were charged on the said lands in the condition aforesaid mentioned, or any part thereof; and that he the said *Francis* from time to time, and at all times from the making of the writing obligatory aforesaid, until the 10th day of *October* in the 36th year of the reign of the said lord *Charles* the second, late king of *England*, &c. at *Bitton* aforesaid in the county aforesaid, at his own proper costs and charges paid and discharged all and all manner of taxes, dues and duties, after the making of the writing obligatory aforesaid charged on the several lands in the said condition mentioned, or on any part thereof, according to the form and effect of the condition aforesaid; and that the said *Edward* in his life-time before the said 10th day of *October* in that year, to wit, on the first day of *September* in the said 36th year of the reign of the said lord *Charles* the second, at *Bitton* aforesaid in the county aforesaid, surrender'd the said several parcels of land in the said condition above mentioned, and every part and parcel thereof, and his whole term and estate in the same, to *Richard Jones*, esq; and his heirs, which said *Richard Jones* then and there accepted of the surrender aforesaid: And this

this the same *Francis* is ready to verify: Wherefore he prays judgment if the said *Thomas* ought to have or maintain his action aforesaid thereof against him, &c.

AND the said *John Clarke* by *Robert W.* his attorney comes and defends the force and injury when, &c. And says, that the said mayor and the good men of the town of *Guildford* ought not to have their action aforesaid against him, because he says, that by a certain act made and provided in a parliament of the lord *Charles* the second, late king of *England*, &c. held at *Westminster* in the county of *Middlesex* in the 13th year of his reign, it was enacted by the authority of the same parliament, among other things, that commissions should before the twelfth day of *February* then next be issued forth under the great seal of *England* unto such persons as his said late majesty should appoint for the executing the powers and authorities therein after expressed, and that all and every the persons to be named commissioners in the said commissions respectively, should by virtue of that act be commissioners respectively for and within the several cities, corporations, boroughs and cinque ports and their members, and other port-towns within the kingdom of *England*, dominion of *Wales* and town of *Berwick upon Tweed*, for which they should be respectively nominated and appointed: And it is farther enacted by the same act by the authority aforesaid, that all persons who upon the four and twentieth day of *December* 1661 should be mayors, aldermen, recorders, bailiffs, town-clerks, common council men, and other persons then bearing any office or offices of magistracy, or places or trusts, or other employment relating to or concerning the government of the said respective cities, corporations and boroughs and cinque ports, and their members, and other port-towns, should at any time before the twenty-fifth day of *March* 1663, when they should be thereunto required by the said respective commissioners, or any three or more of them, take the oaths of allegiance and supremacy, and the oath in the same act specified, and also at the said time should publickly subscribe before the said commissioners, or any three of them, the declaration in the same act specified: And it is farther by the same act enacted by the authority aforesaid, that the said respective commissioners, or any three of them respectively, should have power, during the continuance of their respective commissions, to administer the oaths aforesaid, and tender the said declaration to the said persons thereby required to take and subscribe the same, and from and after the expiration of the said respective commissions, the said three oaths and declaration should be from time to time administer'd and tender'd to such person and persons who, by the true meaning of that act, or any clause therein contained, were to take the same by such person or persons respectively, who by the charters or usages of the said respective cities, corporations and boroughs, and cinque ports

That the defendant did not receive the sacrament pursuant to 13 Car. 2. stat. 2. cap. 1.

[110]

and their members, and other port-towns, ought to administer the oath for due executing the said places or offices respectively, and in default of such, by two justices of the peace of the said cities, corporations and boroughs, and cinque ports and their members, and other port-towns for the time being, if any such there be, or otherwise by two justices of the peace for the time being of the respective counties where the said cities, corporations or boroughs, or cinque ports, or their members, or other port-towns: And it is further enacted by the same act by the authority aforesaid, that from and after the expiration of the said commissions no person or persons should for ever thereafter be placed, elected or chosen, in or to any of the offices or places aforesaid, that should not have within one year next before such election or choice taken the sacrament of the Lord's supper, according to the rites of the church of *England*; and that every such person and person so placed, elected or chosen, should likewise take the aforesaid three oaths, and subscribe the said declaration at the same time when the oath for the due execution of the said places and offices respectively should be administer'd; and in default thereof every such placing, election and choice, is thereby enacted and declared to be void: And it is thereby enacted by the authority aforesaid, that the powers granted to the commissioners by virtue of that act should continue and be in force until the five and twentieth of *March* 1663, and no longer, as by the same act more fully appears: And the same *John Clarke* farther says, that he is, and at the time of the said election of the said *John* to be baliff of the said town of *Guildford*, in the declaration aforesaid above supposed to be made, was a protestant subject of the said now lord and lady the king and queen dissenting from the church of *England*; and that he the said *John Clarke*, at any time within one year next before the time of the election of him the said *John Clarke* to be bailiff of the said town of *Guildford* aforesaid, by the declaration aforesaid above supposed to be made, had not taken the sacrament of the Lord's supper according to the rites of the church of *England*; wherefore by virtue of the said statute the same *John Clarke*, at the time of the election aforesaid in the declaration aforesaid above supposed to be made, was disabled and incapable to be elected to the said place or office of bailiff of the town of *Guildford* aforesaid, and the said election of the said *John Clarke* to be bailiff of the town of *Guildford* aforesaid, and the said election of the said *John Clarke* to be bailiff of the same town by the declaration aforesaid above supposed, by virtue of the act aforesaid, was void: And this he is ready to verify: Wherefore he prays judgment if the said mayor and good men of the town of *Guildford* aforesaid ought to have their action aforesaid against him, &c.

WHEN,

WHEN, &c. And says that the said *Thomas* ought not to have or maintain his action aforesaid thereof against him; because he says that otherwise, to wit, in *Easter* term last past before the lord the king at *Westminster*, came the said *John Friend* in the court of the lord the king before the king himself, (the same court being at *Westminster*) by *William H.* his attorney, and produced in the court of the said lord the king then there his certain bill against the said *John Freeland*, then in the custody of the marshal, &c. And there were pledges to prosecute, to wit, *John Doe* and *Richard Roe*: Which said bill follows in these words, to wit, *Suffex*, to wit, *John Friend* complains of *John Freeland* in custody of the marshal, &c. in a plea that he render to him 200*l.* &c. *so on to.* And therefore he then produced the suit, &c. And it was in such manner in the same court there proceeded, that the same *John Friend* afterwards in the life-time of the said *John Freeland*, in the same *Easter* term in the year aforesaid, by the judgment of that court recovered against the said *John Freeland* 200*l.* for the debt, and 56*s.* 4*d.* his damages which he had sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, as by the record and proceedings thereof in the same court of the said lord the king before the king himself at *Westminster* aforesaid remaining more fully appears: Which said judgment was and yet is in its full force, strength and effect, not reversed, annulled or satisfied: And the said *John Friend* farther says, that the said *John Freeland* in his life-time, to wit, on the 13th day of *February* in the 34th year of the reign of the lord *Charles* the second, late king of *England*, &c. at *Lewes*, by his certain writing obligatory acknowledged himself to be bound to one *Stephen Snatt* in 100*l.* to be paid to the same *Stephen* when he should be thereto required; which said 100*l.* the said *John Freeland* in his life-time, nor the said *John Friend* after the decease of the said *John Freeland*, (to whom administration of all and singular the goods and chattels, which belonged to the said *John Freeland* at the time of his death, at *Lewes* aforesaid was committed), altho' often required, &c. had not paid, nor had either of them paid; wherefore the said *Stephen* after the death of the said *John Freeland*, to wit, in *Michaelmas* term in the 1st year of king *James* the second, impleaded the said *John Friend* in the court of the lord the king of the bench, (the same court being at *Westminster* in the county of *Middlesex*), for the said 100*l.* and it was in such manner proceeded in the same court that the said *Stephen* afterwards, to wit, in the same *Michaelmas* term in the year aforesaid in the same court, before *Thomas Jones*, knr. and his companions, then justices of the said lord the king of the bench here, to wit, at *Westminster* aforesaid, by the consideration of the same court, recovered against the said *John Friend* this debt aforesaid, and his damages by reason of the detention of that debt

By an administrator by judgment against the intestate on a *Mutatus* in the king's bench.

Another judgment on a bond against the defendant in the common pleas.

Another judgment in debt for rent arrear in the intestate's time in the common pleas.

debt to 40*s.* to the said *Stephen* with his assent by the court here adjudged, of the goods and chattels which belonged to the said *John Freeland* at the time of his death, being in the hands of the said *John Friend* to be administred, to be levied, if he had so much thereof in his hands to be administred; and if he had not so much thereof in his hands, then the damages aforesaid to be levied of the proper goods and chattels of the said *John Friend*: And the said *John Friend* in mercy, &c. Which said judgment was and yet is in its full force, strength and effect, not reversed, annulled or satisfied: And the same *John Friend* farther says, that in the said *Michaelmas* term in the year aforesaid, in the same court of the lord the king of the bench here, to wit, at *Westminster* aforesaid in the county aforesaid, one *Sackville Tufton*, esq; impleaded the same *John* in a plea that he should render to him 45*l.* which he unjustly detained from him, &c. And whereon the same *Sackville* by *J. Alcocke* his attorney said, that whereas the said *Sackville* in the life-time of the said *John Freeland*, to wit, on the 28th day of *September* in the 34th year of the reign of the lord *Charles* the second, late king of *England*, &c. at *Eastgrimstead* in the county aforesaid, had demised to the said *John Freeland* the moiety of a messuage, barn and certain lands, containing by estimation 120 acres more or less, with the appurtenances in the common fields of *Bright-helmstone*; to have and to hold to the said *John Freeland* from thence until the end of one year from thence next following, and so from year to year as long as both parties should please; yielding therefore yearly and every year, as long as the said *John Freeland* should have and hold the tenements aforesaid by virtue of that demise, 45*l.* of lawful money of *England* to the said *Sackville*: By virtue of which demise the said *John Freeland* afterwards in his life-time, to wit, on the twenty-ninth day of the same month of *September* in the thirty-fourth year of the reign of the said late king aforesaid, into the tenements aforesaid with the appurtenances entered, and was thereof possessed, and the same tenements in his life-time had and held from thence until the twenty-ninth day of *September* in the first year of the reign of the lord the now king aforesaid, and 45*l.* of the rent aforesaid, for the tenements aforesaid with the appurtenances, at the same feast for one whole year in the life-time of the said *John Freeland* to the said *Sackville*, were in arrear and unpaid, whereby the action accrued to the same *Sackville* to demand and have of the said *John Freeland* in his life-time the said 45*l.* Nevertheless the said *John Freeland* in his life-time, and the said *John Friend* after the death of the said *John Freeland*, altho' often required, &c. the same 45*l.* to the said *Sackville* had not rendered, but the said *John Freeland* in his life-time, and the said *John Friend* after the death of the said *John Freeland*, (to whom administration of the goods and chattels which belonged to the said *John Freeland* after the death of the said *John Freeland* was duly committed), had refused to render him
the

the same; and the said *John Friend* then refused to pay him them; whereby the said *Sackville* says that he was prejudiced, and had damage to the value of 10*l.* And therefore he produced the suit, &c. And it was in such manner in the same court of the lord the king of the bench proceeded, that the same *Sackville* afterwards, to wit, in the same *Michaelmas* term in the year abovesaid, in the same court before *T. Jones*, knt. and his companions, then justices of the bench here, to wit, at *Westminster* aforesaid, by consideration of the same court recovered against the said *John Friend* his debt aforesaid, and his damages by reason of the detention of that debt, to 50*s.* to the same *Sackville* by his assent by the court here adjudged, to be levied of the goods and chattels which belonged to the said *John Freeland* at the time of his death, being in the hands of the said *J. Friend* to be administred, if he had so much thereof in his hands to be administred; and if he had not so much in his hands, then the damages aforesaid to be levied of the proper goods and chattels of the said *John Friend*: And the same *John Friend* in mercy, &c. Which said judgment was and yet is in its full force and effect, not reversed, annulled or satisfied: And the same *John Friend* farther says, that he hath fully administred all the goods and chattels which belonged to the said *John Freeland* at the time of his death; and that he hath not, nor at the time of the exhibition of the bill of the said *Thomas Woolger* aforesaid or ever after had, any goods or chattels which belonged to the said *John Freeland* at the time of his death in his hands to be administred, except goods and chattels to the value of 5*l.* and not more, which are liable to the payment of the said several sums of money by the said several judgments recovered: And this he is ready to verify: Wherefore he prays judgment if the said *Thomas Woolger* ought to have his action aforesaid thereof against him; with this, that the said *John Friend* will verify, that the said *John Friend* in the several judgments named, and the said *John Friend* in the declaration aforesaid abovenamed, are one and the same person, and not other nor divers, &c.

Fully adminis-
tred.
Pract. Reg.
567, 568.

Except 5*l.*

Averment of
identity.

WHen, &c. And says that he cannot deny the action of the said *George* aforesaid, nor but that the writing aforesaid is the deed of the said *John* his brother, nor but that he is the brother and heir of the said *John*, nor but that he owes to the said *George* the said 100*l.* in the form in which the said *G.* above against him hath declared; but the said *Samuel* says, that long before the making of the writing aforesaid, to wit, on the 1st day of *April* in the year of the Lord 1655, one *Samuel Briddon*, the grandfather of the said *Samuel* now defendant, was seised of three messuages, one cottage and 100 acres of land, lying and being in *Youlgrave* in the county aforesaid, in his demean as of fee, and so being thereof seised the same *S. B.* the grandfather, before the making of the writing aforesaid, to wit,

Nothing by def-
cent except a
reversion.

27 H. 3. c. 10.

[113]

wit, the same day and year at *Youlgrave* aforesaid, by his deed sealed enfeoffed one *Robert Bateman* of the messuages and tenements aforesaid with the appurtenances, to have and to hold to the said *Robert Bateman* and his heirs, to the use of the said *S. B.* the grandfather for the term of his life, without impeachment of any waste; and after his decease, then as to the use of a moiety thereof to the use of one *Anne Bateman* for the term of her life; and after the several deaths of the said *S. B.* the grandfather and *Anne* the said several estates being determined, then to the use of the heirs male of the body of the said *S. B.* the grandfather on the body of the said *Anne* lawfully to be begotten; and for want of such issue, to the use of the heirs female of the body of the said *S. B.* the grandfather on the body of the said *Anne* lawfully to be begotten; and for want of such issue, then to the use of the right heirs of the said *S. B.* the grandfather for ever: By virtue of which said feoffment, and by force of a certain act made and provided in a parliament of the lord *Henry* the eighth, late king of *England*, held at *Westminster* in the county of *Middlesex* on the fourth day of *February* in the 27th year of his reign for transferring uses into possession, the same *S. B.* the grandfather was seised of the said messuages and tenements with the appurtenances in his demean as of freehold for the term of his life, the remainder thereof over expectant, as above in form aforesaid is limited; and so being thereof seised the said *S. B.* the grandfather afterwards, and before the making of the said writing, to wit, on the 1st day of *May* in the year of the lord 1656, at *Youlgrave* aforesaid, had issue male of his body, on the body of the said *Anne* lawfully begotten, the said *John* his elder son and him the said *Samuel* his younger son, and afterwards, to wit, on the 1st day of *June* in the year of the Lord 1675, the said *S. B.* the grandfather and the said *Anne* at *Youlgrave* aforesaid in the county aforesaid died of such their estate so therein seised, after whose death the said *John* into the said messuages and tenements aforesaid with the appurtenances entered, and was thereof seised in his demesne as of fee-tail, to wit, to him and the heirs of his body lawfully begotten, the remainder thereof over as above is limited in form aforesaid expectant, the reversion thereof to the same *John* and his heirs expectant; and so being thereof seised the same *John* afterwards, to wit, on the first day of *May* in the year of the Lord 1685, at *Youlgrave* aforesaid in the county aforesaid, of such his estate died thereof seised without issue of his body begotten; after whose death the said *Samuel*, the now defendant, into the messuages and tenements aforesaid with the appurtenances entred, and was and yet is seised thereof in his demesne as of fee-tail, to wit, to him and the heirs of his body lawfully to be begotten, the remainder thereof over as above in form aforesaid is limited expectant: And the said *S.* the now defendant, farther says, that he the said *Samuel*, the now defendant, hath not any lands or tenements by hereditary descent

descent from the said *John* his brother in fee-simple, nor had on the day of the issuing of the original writ in this behalf, nor ever after, except the said reversion in fee-simple on the said estate-tail, whereof the said *Samuel Briddon* the grandfather infeoffed the said *Robert Bateman* in form aforesaid, which said reversion descended to the said *Samuel* as brother and heir of the said *John* by hereditary right in fee-simple, and except one cottage, one garden, and one acre of land, with the appurtenances, in *Youlgrave* aforesaid in the county aforesaid: And this he is ready to verify: Wherefore he prays judgment if he the said *Samuel*, the now defendant, as brother and heir of the said *John* his brother, with the debt aforesaid, except from the said reversion of the messuages and tenements aforesaid, whereof the said *Samuel Briddon* the grandfather infeoffed the said *Robert Bateman* in form aforesaid, and in the said one cottage, one garden, and one acre of land, with the appurtenances, in *Youlgrave* aforesaid, by virtue of the writing aforesaid ought to be charged, &c.

AND the said *Mary* and *Dorothy* by *A. B.* their attorney come and defend the force and injury when, &c. And say, that they the said *Mary* and *Dorothy* of and upon the promises aforesaid ought not to be charged, because they say, that by a certain act made and provided in a parliament of the lord *Charles* the second, late king of *England*, &c. begun and held at *Westminster* the 25th day of *April* in the 12th year of his reign, among other things it is enacted by the authority of the same parliament, that no person or persons whatsoever from and after the 29th day of *September* in the year of our Lord 1660, upon any contract shall from and after the said 29th day of *September* take directly or indirectly for loan of any monies, wares, merchandize or other commodities whatsoever, above the value of 6*l.* for the forbearance of 100*l.* for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time: And that all bonds, contracts and assurances whatsoever made after the time aforesaid for payment of any principal, or money to be lent or covenanted to be performed, upon or for any usury whereupon or whereby there should be reserved or taken above the rate of 6*l.* in the hundred, as aforesaid, should be utterly void, as in the same act, among other things, more fully is contained: And the same *Mary* and *Dorothy* say farther, that after the making of the said act, and after the said 29th day of *September* in the year of the Lord 1660, to wit, on the 23d day of *May* in the year of the Lord 1695 at *Westminster* in the county aforesaid, it was corruptly agreed between the said *Ward* and the said *Mary* and *Dorothy*, that the said *Ward* should accommodate and lend the said *Mary* and *Dorothy* the sum of 18*l.* and should give day for the payment thereof until the first day of *October* next following; and that the said *Mary* and *Dorothy*, for the loan of the same 18*l.* and for giving day of payment thereof for the time aforesaid, should give and pay to the said *Ward* the sum of 30*s.* of lawful money

Bar by stat. 12
Car. 2. c. 13. of
usury.
Pract. Reg. 671,
674.

money of *England* on the said first day of *October* then next following for the gain and interest thereof, and for giving day of payment of the said 18*l.* whereupon the said *Ward* in performance of that corrupt agreement afterwards, to wit, on the said 23d day of *May* in the year and place in the declaration aforesaid above mentioned, did accommodate and lend the said *Mary* and *Dorothy* the said 18*l.* and gave day for the payment thereof until the said first day of *October* then next following; and thereupon the said *Mary* and *Dorothy* then and there, to wit, on the said 23d day of *May* in the year and place in the declaration aforesaid above mentioned did pay to the said *Ward* the said sum of 30*s.* for the gain and interest of the said 18*l.* and for giving day for the payment thereof upon the said first day of *October* next following, in performance and fulfilling, and according to the form and effect of the corrupt agreement aforesaid: And the same *Mary* and *Dorothy* farther say in fact, that the said 30*s.* for the interest and giving day of payment of the said 18*l.* for the time aforesaid exceed the rate or sum of 6*l.* for 100*l.* for one whole year; whereby the promises and assumptions in the declaration aforesaid above mentioned, by virtue of the statute aforesaid, are void in law: And this they are ready to verify: Wherefore they pray judgment if they of and upon the promises and assumptions aforesaid ought to be charged, &c.

T. Carthew.

[114]
See Pract. Regist.
287 to 293. 318.
Conditions performed to a bond of apprenticeship.

WHICH being read and heard the same *Charles* says, that the said *Henry* ought not to have or maintain his action aforesaid thereof against him, because he says, that he from the time of the making of the writing obligatory aforesaid hitherto hath well and faithfully observed, performed and fulfilled all and every thing in the condition aforesaid mentioned on his part to be performed, observed and fulfilled, according to the form and effect of the said condition, to wit, at *London* aforesaid in the parish and ward aforesaid: And this he is ready to verify: Wherefore he prays judgment if the said *Henry* ought to have or maintain his action aforesaid thereof against him, &c.

Breach, that he received 40*l.* of his master's money which he wasted.

And the said *Henry* says, that he by any thing by the said *Charles* above in pleading alledged ought not to be precluded from his action aforesaid thereof against him the said *Charles* had, because he says, that after the making of the bond aforesaid, and during the time in which the same *John Foster* remain'd in the service of the said *Henry*, to wit, on the first day of *February* in the 36th year of *Charles* the second abovesaid, at *London* aforesaid in the parish and ward aforesaid, he the said *John Foster* hath and received of the money of the said *Henry* the sum of 40*l.* by him the said *John*, as servant of him the said *Henry*, to be paid; and that the said *John Foster* the same 40*l.* then and there elained, wasted, and from the said *Henry* unjustly detained, and to the use of him the said *John* then and there converted and disposed; whereof he the said *Henry* afterwards, to wit, on the first day of

May

May in the first year of the reign of the lord and lady the now king and queen, at *London* afore said in the parish and ward afore said, gave notice to the same *Charles*, and then and there required him the said *Charles* to pay him the said *Henry* the same 40*l.* and that the said *Charles* then absolutely denied, and yet doth deny, to pay the said *Henry* the same 40*l.* And this he is ready to verify: Wherefore he prays judgment and his debt afore said, together with his damages by reason of the detention of that debt, to be adjudged to him, &c.

And the said *Charles* says, that the said *John Foster* did not eloin, waste, detain, nor to his own proper use convert and dispose the said 40*l.* of the money of him the said *Henry*, or any penny thereof, in manner and form as the said *Henry* above thereof in replying hath alledged: And of this he puts himself upon the country, and the said *Henry* likewise, &c. Therefore let a jury thereon come before the lord and lady the king and queen at *Westminster* on next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties afore said there, &c.

Rejoinder, that
he did not waste,
and issue thereon.

WHEN, &c. And prays oyer of the writing obligatory afore said; and to him it is read; and he likewise prays oyer of the condition of the same writing obligatory; and to him it is read in these words: The condition of this obligation is such, that if the above-bound *Amos Bodley* do appear before the said lord and lady the king and queen at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity*, to answer to *John Doble*, esq; in a plea of trespass, and also to the bill of the said *John* against the said *Amos* for 60*l.* for a debt, according to the custom of the court of the said lord and lady the king and queen before the king and queen themselves to be exhibited, then this present obligation to be void and of no effect, otherwise to remain in its full force, strength and effect: Which being read and heard, the same *Amos* says, that the said *Hugh* ought not to have or maintain his action afore said thereof against him, because he says, that after the making of the writing obligatory afore said, and before the day of the exhibition of the bill afore said, to wit, on the said *Wednesday* next after three weeks of the Holy *Trinity*, in the condition afore said above mentioned, he the same *Amos* appeared before the said lord and lady the king and queen at *Westminster*, to answer to the said *John Doble* in the plea and bill afore said, according to the form and effect of the condition afore said: And this he is ready to verify by the record thereof in the court of the said lord and lady the king and queen before the lord and lady the king and queen themselves at *Westminster* afore said remaining: Wherefore he prays judgment if the said *Hugh* ought to have or maintain his action afore said thereof against him, &c.

That he appeared
at the day in
K. E.

And the said *Hugh* says, that he by any thing by the said *Amos* above in pleading alledged ought not to be precluded from his action afore said thereof against him the said *Amos* had, because he says,

Repl. that there
is no such record.

says, that there is not any such record of appearance by the said *Amos* made before the said lord and lady the king and queen at *Westminster* afore said on record remaining, as the same *Amos* above by pleading hath alledged: And this he is ready to verify: Wherefore he prays judgment if he the said *Hugh* ought to be precluded from his action afore said thereof against the said *Amos* had, &c.

Rejoinder that
there is such re-
cord.

[115]

Conditions per-
formed to arti-
cles.

And the said *Amos* as before says, that there is such record of the appearance of [him the said *Amos* before the said lord and lady the king and queen at *Westminster* on record remaining, as the same *Amos* above in pleading hath alledged: And this he is ready to verify by that record: And the same *Amos* is order'd to have that record before the said lord and lady the king and queen at *Westminster* on next after at his peril: The same day is given to the said *Hugh* there, &c.

WHEN, &c. And says, that he well and truly hath kept and performed all and every the covenants, grants, articles, clauses, provisoes, payments, conditions and agreements in the same articles contained, which on the part of him the said *Dalby Thomas* were to be kept and performed according to the form and effect of the bargain and sale afore said: And this he is ready to verify: Wherefore he prays judgment if the said lady *Eleanor* ought to have or maintain her action afore said thereof against him, &c.

Breach in non-
payment of 34 l.
10 s.

And the said lady *Eleanor* says, that she by any thing by the said *Dalby Thomas* above in pleading alledged ought not to be precluded from her action afore said thereof against him had, because she says, that the said *Dalby Thomas* did not pay to the said lady *Eleanor Holles* the said 34 l. 10 s. in manner and form as the said *Dalby* above by pleading hath alledged: And this she prays may be inquired of by the country.

Demurrer.

And the said *Dalby Thomas* says, that the plea afore said by the said lady *Eleanor Holles* above by replying pleaded, and the matter in the same contained, are not sufficient in law for the said lady *Eleanor* to maintain her action afore said thereof against him had, to which the same *Dalby* hath no necessity, nor is by the law of the land obliged, in any wise to answer: And this he is ready to verify: Wherefore for want of a sufficient replication in this behalf, the same *Dalby* as before prays judgment, and that the said lady *Eleanor* may be precluded from her action afore said thereof against him the said *Dalby* had, &c.

Joinder.

And the said lady *Eleanor Holles* says, that the plea afore said by her the said lady *Eleanor* in manner and form above said in replying pleaded, and the matter in the same contained are good and sufficient in law to maintain the action of her the said lady *Eleanor* afore said thereof against the said *Dalby* had; which said plea, and the matter therein contained, she the said lady *Eleanor* is ready to verify and prove, as the court, &c. And because the said *Dalby* to that replication doth not answer, nor hitherto

any way deny the same, she the said lady *Eleanor* prays judgment and her debt aforesaid, together with her damages by reason of the detention of that debt, to be adjudged to her: But because the court of the said lord and lady the king and queen now here are not yet advised to give their judgment of and upon the premises, day is given to the parties aforesaid before the lord and lady the king and queen, until day next after to hear their judgment of and upon those premises, because the court of the said lord and lady the king and queen now here thereof not yet, &c.

Contin'.

Payne at the suit of Payne.

WHEN, &c. And prays oyer of the writing obligatory aforesaid; and to him it is read; he likewise prays oyer of the condition of the same writing; and to him it is read in these words, to wit, The condition of this obligation is such, that if the abovebounden *Robert Payne*, his executors and administrators, shall and do well and truly observe, perform, fulfil, accomplish, pay and keep all and singular the covenants, grants, articles, clauses, provisoes, payments, conditions and agreements whatsoever, which on the part and behalf of the said *Robert Payne* his executors and administrators, are or ought to be observed, performed, fulfilled, accomplished, paid and kept, comprized or mentioned in one pair of indentures, bearing even date with these presents, made and expressed to be made between the said *Robert Payne* of the one part, and the said dame *Alice Payne* of the other part, in all things according to the true intent and meaning of the same pair of indentures, then this present obligation to be void and of none effect, or else to be and remain in full force and virtue: Which being read and heard, the same *Robert* says, that the said *Alice* ought not to have or maintain her action aforesaid thereof in the condition aforesaid there against him, because he says, that the indentures aforesaid in the condition aforesaid above specified were made at the parish of *St. Martin in the Fields* aforesaid in the county of *Middlesex* aforesaid, on the said 15th day of *April* in the 33d year of the reign of the lord *Charles* the second, late king of *England*, &c. aforesaid, between the same *Robert Payne*, by the name of *Robert Payne* of the *Inner Temple*, *London*, esq; of the one part, and the said *Alice Payne*, by the name of dame *Alice Payne*, relict of *John Payne* late of *Stratford* in the county of *Hereford*, knt. deceased, of the other part; which other part sealed with the seal of the said *Alice Payne* the same *Robert* here in court produces, the date whereof is the same day and year; in which said indenture reciting, that whereas the said *John Payne*, knt. the father of the same *Robert Payne*, by his indenture bearing date the eleventh day of *November* in the year of the Lord 1664, and in the 16th year of the reign of the lord king *Charles* the second, for the consideration in the same indenture mentioned had granted, bargained and sold to the same *Robert Payne* all

Conditions performed specially.
Pract. Reg. 317,
318.

[116]

those two closes or parcels of land or meadow, called *Lincoln's Meadow*, containing by estimation eleven acres and two rods, be they more or less; which said closes of meadow then or late before were in the tenure or occupation of *Robert Stephens*, his assignees or under-tenants, and were situate, lying and being in the parish and manor of *Lemster* in the same county of *Hereford*, and also all and singular his messuages, lands, tenements and hereditaments, by or of what names, natures, qualities, or number of acres soever the same or any of them were called or contained, situate, lying and being within the several parishes, towns, hamlets or precincts of *Lemster* aforesaid, and of *Stoke Docklove* and *Kimbolton* in the same county of *Hereford*, or in any or either of them, and all and singular other the messuages, lands, tenements and hereditaments of him the said *John Payne*, knt. situate, lying and being in the same county of *Hereford*; and all houses, edifices, erections, buildings, barns, stables, dove-houses, mills, orchards, gardens, court-yards, curtilages, yards, backsides, meadows, pastures, leasowes, fields, commons, commons of pasture, estovers, common of estovers, wastes, waste lands, woods, underwoods, coppices, timber-trees, and all other trees, aqueducts, water-courses, pools, fisheries, ways, paths, easements, profits, commodities, privileges, benefits, emoluments, and appurtenances whatsoever to the same closes, lands, tenements, and hereditaments, or any or either of them, or to any part or parcel of them incident, appendant, or in any wise belonging or appertaining, or ever before demised, held, or usually or commonly enjoyed with the same, or accepted, adjudged, reputed or taken as part, parcel or member thereof, or with the same enjoyed; with their and every of their appurtenances, and the reversion and reversions, remainder and remainders, rents and services of all and singular the premises; To have and to hold the said closes, messuages, lands, tenements and hereditaments with their and every of their appurtenances to the said *Robert Payne*, his executors, administrators and assigns, from the 29th day of *September* then last past unto the full end and term of one year fully to be compleat and ended, at and under the yearly rent of *1. d.* (if the same should be lawfully demanded): And reciting also, that whereas the said *John Payne*, knt. by his indenture bearing date the 12th day of *September* in the year of the Lord 1664 aforesaid, for the consideration therein mentioned had granted, released, aliened and confirmed to the said *Robert Payne* all and singular the closes, messuages, lands, tenements and hereditaments, and other the premises aforesaid in and by the said recited indenture granted, bargained and sold, with their and every of their appurtenances, and all his estate, right, title, interest, use, trust, possession, property, claim and demand whatsoever of him the said *John Payne*, knt. in and to the same, or any part, parcel or member thereof; To have and to hold the said closes, messuages, lands, tenements and hereditaments, and all and singular other the premises in and by the same indenture meant, mentioned or intended to be granted, bargained or sold, released, aliened and confirmed to the said *Robert Payne* and his heirs,

heirs, to the use, intent and purpose, in the same indenture limited and declared, that is to say, to the use of the said *John Payne*, knt. and his assigns for the term of his natural life, without impeachment of waste, and after his decease, to the use of the said *Robert Payne* his heirs and assigns for ever: And by the said indenture it is witnessed, that *Robert Payne*, for and in consideration of 5*s.* in hand paid, the receipt whereof he acknowledged and thereof acquitted the said dame *Alice*, and also in consideration of the release of her right, being administratrix of her late husband the said *John Payne*, knt. and in full recompence, satisfaction and discharge of all her right and title of dower of, in and to the messuages, lands, tenements and hereditaments of the said *John Payne*, knt. and for other good causes and considerations, had demised, granted and to farm letten, and by the same indenture did demise, grant and to farm let, to the said dame *Alice* all the lands, tenements and hereditaments before recited or contained in the deeds of demise and release before mentioned; to have and to hold the said demised premises, and every part and parcel thereof with the appurtenances, to the said dame *Alice*, her executors and assigns, from the day of the date of the said indenture unto the full end and term of 500 years from thence next and immediately following and fully to be compleat and ended; yielding and paying yearly and every year during the said term, at the annunciation of the blessed virgin *Mary*, to the said *Robert Payne* his heirs and assigns, the rent of one pepper-corn, (if the same should be lawfully demanded): And the said *Robert Payne*, for himself, his heirs and executors, did covenant and promise to and with the said dame *Alice*, her executors and administrators by the said indenture, that he the said *Robert Payne* was lawfully seised of a good and perfect estate in fee-simple in the premises in the said indenture before mentioned, and had good power and authority to make the said demise and grant: Provided nevertheless, and under the condition in the said indenture contained, that if the said *Robert Payne*, his heirs, executors or assigns, should yearly and every year, during the life of the said dame *Alice Payne*, well and truly pay or cause to be paid to the said dame *Alice Payne* at or in the common dining-hall of the *Inner Temple*, *London*, the yearly sum of 100*l.* of lawful money of *England* by two equal payments in the year, at the feast of the birth of our Lord God and the nativity of St. *John* the baptist; the first payment thereof to be at the feast of the birth of our Lord God next following the date of the said indenture, without any deduction, defalcation or abatement of or from the same, or any part or parcel thereof, for or in respect of any taxes or impositions ordinary or extraordinary, or any other matter, cause or thing whatsoever, then the said demise and all the estate, title and interest of the said dame *Alice Payne* in and to the said messuages, lands, tenements and hereditaments, should be null and void to all intents and purposes: And the said *Robert Payne*

by the said indenture for himself, his heirs and executors, did covenant, promise and agree to and with the said dame *Alice Payne*, that he the said *Robert Payne*, his heirs, executors, or assigns, or one of them, would well and truly pay or cause to be paid to the said dame *Alice Payne* the said yearly sum of 100*l.* without any deduction or defalcation whatsoever in manner and form aforesaid: And it was farther agreed, that in the mean time, and until some breach of the said covenant should happen to be made, it should be lawful for the said *Robert Payne*, his heirs, executors and assigns respectively, to hold and enjoy the said respective premisses without the lawful impediment, suit, denial or interruption of the said dame *Alice Payne* or any person claiming under her, as by the same indenture more fully appears; which are all the covenants, grants, articles, clauses, proviso's, payments, conditions and agreements whatsoever in the indenture aforesaid contained: And the same *Robert Payne*, from the time of the making of the indenture aforesaid unto the day of the exhibition of the bill aforesaid of her the said *Alice* in this behalf, hath well and truly observed, performed, fulfilled, paid and kept all and singular the covenants, grants, articles, clauses, proviso's, payments, conditions and agreements on the part of him the said *Robert* to be observed, performed, fulfilled, paid and kept according to the form and effect of the indenture aforesaid here in court produced: And this the same *Robert Payne* is ready to verify: Wherefore he prays judgment if the said *Alice* ought to have or maintain her action aforesaid thereof against him, &c.

Breach assigned
in non-payment
of 50*l.*

And the said *Alice* says, that she by any thing by the said *Robert* above in pleading alledged ought not to be precluded from her action aforesaid against the said *Robert* had, because by protesting that the said *Robert Payne* hath not performed, observed, fulfilled, paid or kept any covenants, grants, articles, clauses, proviso's, payments, conditions or agreements in the indenture aforesaid contained on his part to be observed, performed, fulfilled, paid and kept according to the form and effect of the indenture aforesaid, for plea the same *Alice* says, that the said *Robert* hath not paid to the same *Alice* 50*l.* on the feast of the birth of our Lord in the second year of the reign of the lady the now queen, which he ought to have paid her on that feast according to the tenor of the indenture aforesaid: And this she is ready to verify: Wherefore she prays judgment and her debt aforesaid, together with her damages by reason of the detention of that debt, to be to her adjudged, &c.

Tender.
5 Co. 114.

And the said *Robert Payne* says, that he the said *Robert*, in and upon the said feast-day of the birth of our Lord in the replication of her the said *Alice* above mentioned, offered to pay the same *Alice* the said 50*l.* in the common dining-hall of the *Inner Temple, London*, to wit, at the parish of *St. Martin in the Fields* in the county of *Middlesex* aforesaid, according to the form and effect of the indenture aforesaid, and that no person

on the behalf of the said *Alice* then and there came to receive that money: And this the same *Robert* is ready to verify: Wherefore as before he prays judgment, and that the said *Alice* may be precluded from her action aforesaid thereof against him the said *Robert Payne* had, &c.

AND the said *Richard Turner* by *John Allen* his attorney comes and defends the force and injury when, &c. And says that otherwise, to wit, in *Easter* term in the seventh year of the reign of the now queen, &c. in the court of the common bench, (the same court being at *Westminster* in the county of *Middlesex*), before *Thomas Trevor*, knt. and his companions, then justices of the same court, he the same *Richard*, and the before mentioned *John Turner* now deceased in his life-time, by the consideration of the same court recovered against the said *William Byshe* late of *Pycombe* in the county of *Sussex*, gent. in his life-time, by the name of *William Byshe* late of *Pycombe* in the county aforesaid, gent. otherwise called, &c. as well a certain debt of 1000*l.* as 50*s.* which to the same *Richard* and *John Turner* by their assent by the same court there were adjudged for their damages which they had sustained by reason of the detention of that debt, whereof the said *William Byshe* then in the same court was convicted, as by the record and process thereof in the same court of common bench at *Westminster* aforesaid in the county aforesaid remaining more fully appears: Which said judgment, against the said *William Byshe* in his life-time so as aforesaid obtained, was for a just and true debt to the said *Richard* and *John Turner* by the same *William Byshe* in his life-time due and then unpaid, and doth yet in its full force remain on record, being not reversed, annulled or satisfied: And the said *Richard* says, that he hath fully administred all and singular the goods and chattels which belonged to the said *William Byshe* at the time of his death in his hands to be administred, and that he hath not any goods or chattels which belonged to the said *William Byshe* at the time of his death in his hands to be administred, nor had on the day of the exhibition of the bill aforesaid of him the said *Thomas*, nor ever after, except goods and chattels to the value of 20*l.* which are charged and bound with the execution of the judgment aforesaid: And this the same *Richard* is ready to verify: Wherefore he prays judgment if the said *Thomas* ought to have or maintain his action aforesaid thereof against him, &c. with this, that the same *Richard* will verify that the said *William Byshe* in the judgment aforesaid above mentioned defendant, and the said *William Byshe* in the bill of the said *Thomas* above named testator, are one and the same person, and not other nor diverse.

Tho. Pengelly.

Bar by judgment
in C. B. in debt
against the tes-
tator.

[118]

Averment that
it was for a just
debt.

Hath fully ad-
ministred.
1 Show. 272.

Except 20*l.*

Adams at the suit of Reily and another.

Conditions performed pleaded specially to a bond for performance of covenants in a lease of the glebe land and tithes of a rectory.

When, &c. And prays oyer of the writing obligatory aforesaid; and to him it is read, &c. he likewise prays oyer of the condition of the same writing; and to him it is read in these words, to wit, Whereas the above mentioned *George Adams* hath by his deed of demise, &c. then the above written obligation shall be void, or else it shall stand in full force and virtue in law: Which being read and heard, the same *George* says, that the said *James* and *Silvester* ought not to have or maintain their action aforesaid against him, because he says, that the indenture aforesaid in the condition above specified was made the day and year aforesaid, at *London* aforesaid in the parish and ward aforesaid, between the said *George*, by the name of *George Adams*, clerk, and rector of *Killsker* in the county of *Meath*, of the one part, and the said *James* and *Silvester*, by the names of *James Reily* of in the county of *Westmeath*, esq; and *Silvester Reily* of *Miltowne* in the county of *Meath*, gent. of the other part; which other part sealed with the seals of the said *James* and *Silvester* the said *George* produces here in court, the date whereof is the same day and year: By which said indenture the said *George*, for and in consideration of the yearly rent and covenants after in the same indenture reserved and contained, and for divers other good and valuable considerations the said *George* thereto moving, had demised, granted, set and to farm let, and by the same indenture did demise, grant, set and to farm let, to the said *James* and *Silvester* all and singular the glebe lands to the rectory of the said parish church belonging, and also all those tithes of grain, hay, lamb and wool, and all other tithes whatsoever, as well great as small due and accruing, and which should be due and accrue from the said rectory, and from every part and parcel thereof; to have and to hold all and singular the said glebe lands and the said tithes, as well great as small, with their and every of their appurtenances, to the said *James* and *Silvester*, their executors, administrators and assigns, from the first day of *May* then last past for and during the full term and time of 51 years from thence next ensuing and fully to be compleat and ended, if the said *George* should so long live; the said *James* and *Silvester* yielding and paying therefore and thereout yearly and every year during the said term unto the said *George*, his executors, administrators or assigns, the yearly rent of 12*l.* 10*s.* sterling for the first five years of the said term, and the yearly rent of 60*l.* sterling for the remaining part of the said term, on the feast of *All Saints* and of *St. Philip* and *Jacob* yearly by equal portions; the first payment thereof to be made on the feast of *All Saints* next ensuing the date of the said indenture: And the said *James* and *Silvester* for themselves, their executors, administrators and assigns, did covenant, grant and agree, to and

with the said *George*, his heirs, executors, administrators and assigns, that they the said *James* and *Silvester*, their executors, administrators and assigns, should and would from time to time pay the said reserved yearly rent of 12*l.* 10*s.* sterling for the said first five years of the said term, and the yearly rent of 60*l.* sterling during the remaining part of the said term, at the feasts aforesaid yearly and every year by equal portions: And the said *George* for himself, his heirs, executors, administrators and assigns, did by the said indenture covenant, grant and agree, to and with the said *James* and *Silvester*, their executors, administrators and assigns, that it might and should be lawful to and for the said *James* and *Silvester*, their executors, administrators and assigns, to have, hold, possess and enjoy from time to time during the said term, and to their own proper use and behoof to take, all and singular the glebe lands and tithes, as well great as small, which should accrue or be due from or out of any part thereof; and the said *George* did by the said indenture bind himself, his heirs, executors administrators and assigns, in the penalty of 500*l.* that they the said *James* and *Silvester*, their executors, administrators and assigns, should have, hold and quietly enjoy the glebe lands and tithes aforesaid, as well great as small, of the rectory, church and parish aforesaid during the said term: And the said *George* did by the indenture aforesaid warrant and defend the same to the said *James* and *Silvester*, their executors, administrators and assigns, for and during the said term, as by the said indenture more fully appears; which are all and singular the covenants, provisoes and agreements in the said indenture mentioned and contained; and the said *George* says, that he from the time of making of the indenture aforesaid hitherto hath well and faithfully observed, performed, fulfilled and kept all and singular the covenants, payments, provisoes and agreements in the indenture aforesaid above specified, on his part to be observed, performed, fulfilled and kept, according to the form and effect of the indenture aforesaid: And this he is ready to verify: Wherefore he prays judgment if the said *George* and *Silvester* ought to have or maintain their action aforesaid against him, &c.

And the said *James* and *Silvester* say, that they by any thing by the said *George* above in pleading alledged ought not to be precluded from their action aforesaid thereof against him had; because by protesting that the said *George* hath not performed, fulfilled or kept any of the covenants, payments, provisoes or agreements aforesaid, on the part of the said *George* to be observed, performed, fulfilled and kept, according to the form and effect of the indenture aforesaid, as the said *George* above by pleading hath alledged, the same *James* and *Silvester* for plea say, that after the making of the indenture aforesaid, and before the day of the exhibition of the bill aforesaid, to wit, on the 20th day of May, in the year of our Lord 1703, the said *George Adams* the church and rectory of *Killsker* aforesaid into the hands of the reverend father in Christ *Edward*, then lord bishop of *Meath* in the kingdom of *Ireland*, of the rectory and church aforesaid

[119]

Warranty.

Covenants
performed.

Repl. Protesting
that he hath not
performed, say
that he resigned
his rectory into
the hands of th
bishop, &c.

Do not say how.
Degg. 208.

Rejoinder, that
he hath not re-
signed.

ordinary, at *London* aforesaid in the parish and ward aforesaid spontaneously resigned, and by the same resignation that church became vacant: And the said *James* and *Silvester* say, that they could not quietly enjoy, have and possess the glebe lands and tithes aforesaid, according to the form and effect of the indenture aforesaid: And this they are ready to verify: Wherefore they pray judgment and their debt aforesaid, together with their damages by reason of the detention of that debt, to be adjudged to them, &c.

And the said *George* says, that he hath not resigned into the hands of the said bishop of *Meath* the said church and rectory aforesaid in manner and form as the said *James* and *Silvester* above in replying thereto have alledged: And of this he puts himself upon the country: And the said *James* and *Silvester* thereof likewise, &c. Therefore let a jury thereon come before the lady the queen at *Westminster* day next after and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Upon the trial of this issue the plaintiffs were nonsuited.

Bar, that his tes-
tator was in-
debted by bond
to *A. B.*

who sued out an
original against
the defendant.

AND the said *Thomas* by *N. D.* his attorney comes and defends the force and injury, when &c. And says that the said *John* ought not to have or maintain his action aforesaid thereof against him, because he saith that the said *Nicholas Jackett* in his life-time, to wit, on the 17th day of *February* in the 12th year of the reign of the lord *William* the third, late king of *England*, &c. at *H.* in the county aforesaid, by his certain writing obligatory bearing date the same day and year, acknowledged himself to be held and firmly bound to one *Thomas Beard* in 120*l.* to be paid to the same *Thomas Beard* when he should be thereto required, which said 120*l.* at the time of the death of the said *Nicholas Jackett*, was a just and true debt of the said *Nicholas*, and to the said *Thomas Beard* due and unpaid; wherefore the same *Thomas Beard*, for the recovery of the same 120*l.* after the death of the said *Nicholas*, to wit, on the 12th day of *April* in the 3d year of the reign of the lady *Anne*, now queen of *England*, &c. prosecuted out of the court of chancery of the said lady the queen (the same court of chancery being then at *Westminster* in the county of *Middlesex*) a certain writ original of the said lady the queen against him the said *Thomas Jackett* as executor of the will of the said *Nicholas*, by the name of *T. Jackett*, late of *H.* in the county aforesaid, maltster, executor of the will of the said *Nicholas Jackett*, lately otherwise called, &c. in a plea of debt, on a demand of the said 120*l.* to the then sheriff of *Sussex* directed, by which said writ the same lady the now queen commanded the same then sheriff of *Sussex*, that he should command the same *Thomas Jackett*, that he should justly and without delay render to the said *Thomas Beard* the said 120*l.* which he then unjustly detained, as he said; and unless he did, and the said *Tho. Beard* made him the said then sheriff secure to prosecute his suit, then the same sheriff should

summons by good summoners him the said *Tho. Jackett*, that he should be before the justices of the said lady the queen at *Westminster* from the day of *Easter* in 15 days then next coming, to shew why he had not done it, and that he should have then there the names of the summoners, and that writ: On which day, to wit, at the said 15 days of *Easter*, before *T. Trevor*, knt. and his companions, then justices of the said lady the queen of the bench at *Westminster*, came as well the said *T. Beard* by *T. O.* then his attorney, as the said *T. Jackett* by *J. W.* his attorney; and the then sheriff of the county of *Sussex*, to wit, *S. Blunt*, esq; to the same justices then and there returned, and the said *T. Beard* had found the same sheriff pledges to prosecute his writ aforesaid, to wit, *John Doe* and *Richard Roe*, and that the same *T. Jackett* had nothing in his bailiwick by which he could be summoned, &c. whereupon the said *T. Beard* by declaring against the said *T. Jackett* upon his writ aforesaid by his attorney aforesaid, that whereas the said *Nicholas* in his life-time, to wit, on the said 17th day of *February* in the 12th year of the reign of the said lord *William* the third, late king of *England*, &c. above-said, at *H.* aforesaid, by his writing obligatory acknowledged himself to be bound to the said *Tho. Beard* in the said 120*l.* to be paid to the said *Tho. Beard*, when he should be thereto requested: Nevertheless the said *Nicholas* in his life-time, or the said *Tho. Jackett* after the death of the said *Nicholas*, altho' often requested, the said 120*l.* to the said *Tho. Beard* had not render'd, but had denied to render him them, and the said *Tho. Jackett* did then deny to render them to the same *Tho. Beard*, and unjustly detained them, whereby he then said, that he was prejudiced, and had damage to the value of 10*l.* And therefore he produced the suit, &c. And he produced then there in Court the writing aforesaid, which proved the debt aforesaid in form aforesaid, the date whereof was the day and year above-said, &c. And the same *Tho. Jackett* by his attorney aforesaid then defended the force and injury, when, &c. and the same attorney said, that he was not informed by the same *Tho. Jackett*, his master, to give any answer for the said *Tho. Jackett* to the said *Tho. Beard* in the plea aforesaid, and said nothing else thereto whereby the said *Tho. Beard* remained against the said *Tho. Jackett* therein undefended: Therefore it was then considered by the same court, that the said *Tho. Beard* should recover against the said *Tho. Jackett* his debt aforesaid, and his damages by reason of the detention of that debt to 50*s.* to the same *Tho. Beard* by his assent by the court aforesaid there adjudged, to be levied on the goods and chattels which belonged to the said *Nicholas* at the time of his death, being in the hands of the said *Tho. Jackett* to be administered, if he had so much thereof; and if he had not, then the damages aforesaid to be levied of the proper goods and chattels of the said *Tho. Jackett*, and that the said *Tho. Jackett* should then be in mercy, &c. as by the record and process thereof in the said court of the said lady queen of the bench at *Westminster* aforesaid

Returnable in
C. B.

Declaration
thereon.

Judgment by
Not informed.

Averment, the
judgment in
force.

Fully adminis-
ter'd, except 50/.

This averment
is not material.

faid remaining more fully appears; which faid judgment so as aforefaid render'd doth yet in its full force and effect remain not reverfed, annulled or fatisfied: And the fame *Tho. Jackett* farther fays, that he hath fully adminifter'd all the goods and chattels which belonged to the faid *Nicholas* at the time of his death, and that he hath no goods or chattels which belonged to the faid *Nicholas* at the time of his death in his hands to be adminifter'd, nor had on the day of the exhibition of the bill of the faid *John* aforefaid, nor ever after, except goods and chattels to the value of 50*l.* which are charged and bound with the execution of the judgment aforefaid above pleaded: And this he is ready to verify: Wherefore he prays judgment if the faid *John* ought to have or maintain his action aforefaid againft him, &c. with this, that the fame *Tho. Jackett* will verify that the faid *Nicholas* deceased in the bill of the faid *John* named, and the faid *Nicholas* in the record of the judgment aforefaid above pleaded deceased and named, were one and the fame perfon, and not other nor diverfe; and that the faid *Tho. Jackett* above in this plea named executor of the will of the faid *Nicholas*, and the faid *Tho. Jackett* in the faid judgment above pleaded and named executor of the will of the faid *Nicholas*, are one and the fame perfon, and not other nor diverfe.

L. Agar.

Repl. That there
was but 15*l.* due,
on payment
whereof the obli-
gee offered to ac-
knowledge fatis-
faction.

[121]

And the faid *John Hill* fays, that he by any thing by the faid *Thomas* above in pleading alledged ought not to be precluded from his action aforefaid againft him the faid *Thomas* had, be-
cause, as to the judgment aforefaid by the faid *Thomas Beard* againft the faid *Thomas* obtained, the fame *John* fays that it is true, that the faid *Nicholas Jackett* in his life-time became bound to the faid *Thomas Beard* in the faid writing obligatory in the plea aforefaid above-fpecified, and that after the death of the faid *Nicholas Jackett* the faid judgment was had and obtained by the faid *Thomas Beard* againft the faid *Thomas Jackett*, as the faid *Thomas* above by pleading hath alledged; but the faid *John* farther fays, that the faid writing obligatory was made by the faid *Nicholas* in his life-time to the faid *Thomas Beard*, on a condition thereto under-written for the payment of 60*l.* with interest at a certain day then to come and now paff; and the fame *John* farther fays, that 15*l.* and no more, at the time of the judgment aforefaid obtained remained and now remain really due and unpaid to the faid *Thomas* on the faid writing obligatory, and on the judgment aforefaid thereon obtained; and that the faid *Thomas Beard* on payment of the faid 15*l.* before the exhibition of the faid bill of the faid *John* offered, at the fame time of the exhibition of the fame bill was ready and yet is ready, to acknowledge fatisfaction on the judgment aforefaid by him obtained, to wit, at *Lewes* aforefaid in the county aforefaid; and that the faid *Thomas* hath hitherto refufed to pay the faid debt
fo

so as aforesaid remaining really due to the said *Thomas Beard* out of the goods and chattels of the said *Nicholas Jackett*, remaining in his hands to be administer'd, and hath permitted and yet doth permit the said judgment to remain in its full force and effect with an intent to defraud him the said *John* of his debt aforesaid, to wit, at *Lewes* aforesaid in the county aforesaid: And the same *John* says, that the said *Thomas*, on the day of the exhibition of the bill of him the said *John*, to wit, on *Wednesday* next after fifteen days of *Easter*, had divers goods and chattels which belonged to the said *Nicholas* at the time of his death in his hands to be administered sufficient to satisfy the said *Thomas Beard* the said 15*l.* and to satisfy the said *John* his debt aforesaid, and above, to wit, at *Lewes* aforesaid in the county aforesaid: And this he is ready to verify: Wherefore he prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c.

But that it is kept on foot by fraud.

And that he has assets sufficient.

St. John Broderick.

WHEN, &c. And says that the said *Zachary* ought not to have or maintain his action aforesaid thereof against him, because he says, that as to the first promise and assumption in the declaration of him the said *Zachary* abovementioned, one *John Hale* in the said declaration likewise mentioned, after the said 20th day of *February* in the year of the Lord 1712 abovesaid, and within the said six months in the said promissory note for the payment of the said 30*l.* limited, to wit, on the 15th day of *March* in the same year, at *Westminster* aforesaid in the county aforesaid, paid to the same *Zachary* the said 30*l.* in the said promissory note mentioned according to the tenor and contents of the same note, in full satisfaction and discharge of the said promise and assumption of the said *John Cope* in the declaration of him the said *Zachary* and the promissory note aforesaid expressed; which said sum of money the same *Zachary* of the same *John Hale* in full satisfaction and discharge of the same then and there received and accepted: And as to the second and third promises and assumptions of the said *John Cope* in the declaration of the said *Zachary* abovementioned, the said *John Cope* farther for plea says, that after the indorsement of the said promissory note as aforesaid he the said *Zachary* afterwards, to wit, on the said 20th day of *February* in the year of the Lord 1712 abovesaid, at *Westminster* aforesaid in the county aforesaid, received and accepted the promissory note aforesaid under the hand of the said *John Hale* for the payment of the 30*l.* aforesaid to the said *John Cope* or his order, and by the said *John Cope* indorsed, and the same 30*l.* by him appointed to be paid to the said *Zachary*; which said promissory note was by the same *John Cope* delivered to the said *Zachary*, and by him accepted in full satisfaction and discharge of the said several second and third promises and assumptions in the declaration aforesaid abovementioned: And this he is ready to verify: Wherefore he prays judgment if the said *Zachary*

Bar as to the first promise payment. 6 Co. 44.

And as to the second and third promise the acceptance of a note from a third person in satisfaction. Pract. Reg. 13, 15.

Repl. as to the
first promise he
did not pay.

Issue.
As to the residue
that he did not
accept.

Issue.
Venire awarded
to try both issues.

[122]

Latitat sued out.

Zachary ought to have his action aforesaid against the said *John Cope*, &c.

And the said *Zachary* says, that he by any thing by the said *John Cope* above in pleading alledged ought not to be precluded from his action aforesaid thereof against him had, because as to the first promise and assumption in the declaration of the said *Zachary* aforesaid abovementioned the same *Zachary* says, that the said *John Hale* within the six months in the promissory note aforesaid mentioned did not pay to the same *Zachary* the said 30 l. in the same promissory note mentioned, in manner and form as the said *John Cope* above by pleading hath alledged, nor at any time after: And this he prays may be inquired of by the country: And the said *John Cope* likewise, &c. And as to the second and third promises and assumptions in the declaration aforesaid above mentioned, the same *Zachary* says, that he did not receive nor accept the promissory note aforesaid in full satisfaction and discharge of the said second and third promises and assumptions in the declaration aforesaid mentioned, in manner and form as the said *John Cope* above in pleading thereto hath alledged: And this he prays may be inquired of by the country: And the said *John Cope* likewise, &c. Therefore to try as well that issue as the said other issue between the parties aforesaid above joined, let a jury come thereon before the lord the king at *Westminster* day next after and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Case on a promise; the defendant pleaded he did not promise within six years; and the plaintiff replied as follows:

AND the said *John* says, that he by any thing by the said *George* above in pleading alledged ought not to be precluded from his action aforesaid thereof against him the said *G.* had, because he says, that within six years after the cause of action aforesaid in the declaration aforesaid above mentioned accrued, and before the exhibition of the bill aforesaid, to wit, in *Trinity* term in the 30th year of the reign of the lord *Charles* the second, late king of *England*, &c. the said *J.* for the recovery of his damages by reason of the non-performance of the promises and assumptions aforesaid in the declaration aforesaid abovementioned, prosecuted against the said *G.* out of the court of the said lord the now king before the king himself (the same court then being at *Westminster* in the county of *Middlesex*) a certain writ of the said late lord the king called a *latitat*, directed to the then sheriff of the county of *York*, whereby the same sheriff was commanded that he should take the said *G.* if he should be found in his bailiwick, and should safely keep him, so that he might have his body before the said late lord the king at *Westminster* on day next after to answer to the said *J.* in a plea of trespass; and that he should have there then that writ: The same day was given to the said *J.* there, &c. On which day before the said late lord the king at *Westminster* came the said *J.* in his proper

proper person; and the sheriff did not return thereof the writ, nor did any thing therein: Therefore as before the sheriff was commanded that he should take the said G. if he should be found in his bailiwick, and should safely keep him, so that he might have his body before the said late lord the king at *Westminster* on day next after to answer to the said *John* in the plea aforesaid: The same day was given to the said *J.* there, &c. On which day before the said late lord the king at *Westminster* came the said *J.* in his proper person; and the sheriff did not return thereof the writ nor did any thing therein: Therefore as before the sheriff was commanded that he should take the said G. if he should be found in his bailiwick, and him should safely keep, so that he might have his body before the said late lord the king at *Westminster* on day next after to answer to the said *J.* in the plea aforesaid: The same day was given to the said *J.* there, &c. On which day before the said late lord the king at *Westminster* came the said *J.* in his proper person; and the sheriff did not return thereof the writ, nor did any thing therein: Therefore as before the sheriff was commanded that he should take the said G. if he should be found in his bailiwick, and him should safely keep, so that he might have his body before the said late lord the king at *Westminster* on day next after to answer to the said *J.* in the plea aforesaid: The same day was given to the said *J.* there, &c. On which day before the said late lord the king at *Westminster* came the said *J.* in his proper person; and the sheriff did not return thereof the writ, nor did any thing therein: Therefore as before the sheriff was commanded that he should take the body of the said G. if he should be found in his bailiwick, and him should safely keep, so that he might have his body before the said late lord the king at *Westminster* on day next after to answer to the said *J.* in the plea aforesaid: The same day was given to the said *J.* there, &c. On which day before the said late lord the king at *Westminster* came the said *J.* in his proper person; and the sheriff did not return thereof the writ, nor did any thing therein: Therefore as before the sheriff was commanded that he should take the said G. if he should be found in his bailiwick, and him should safely keep, so that he might have his body before the said late lord the king at *Westminster* on day next after to answer to the said *J.* in the plea aforesaid: The same day was given to the said *J.* there, &c. before which day the said lord *Charles* the second, late king of *England* departed this life: On which day before the lord *James* the second, now king of *England*, at *Westminster* came the said *J.* in his proper person; and the sheriff did not return thereof the writ, nor did any thing therein: Therefore as before the sheriff was commanded that he should take the said G. if he should be found in his bailiwick, and him should safely keep, so that he might have his body before the said lord the king at *Westminster* on day next after to answer to the said *J.* in the plea aforesaid: The same day was given

An Alias capias.

A Pluries capias.

Another.

Another.

Another.

Demise of the king.

Another.

Defendant appears.

Plaintiff declares.

[123]

Imparlance.

Not guilty.

Venire.

Another.

The plaintiff created a Duke.

E. 6. c. 7.
3.

given to the said *J.* there, &c. On which day before the said lord the king at *Westminster* came as well the said *J. Walden* by *John Lilly* his attorney, as the said *G.* by *T. M.* his attorney, and the same *G.* put in bail thereto, and in the same court here appeared at the suit of the said *J.* according to the command of the said writ: And thereupon the said *J.* against the said *G.* for the said cause of action in the declaration aforesaid abovementioned in the same court of the said lord the king before the king himself, to wit, at *Westminster* aforesaid in the county of *Middlesex* aforesaid, in the said *Trinity* term in the 1st year of the reign of the lord *James* the second aforesaid, by his bill aforesaid declared in manner and form aforesaid: And the said *J.* farther says, that the cause of action aforesaid, on which the said *J.* against the said *G.* above hath declared, accrued within six years next before the prosecution of the said writ of *latitat* first mentioned, to wit, at *Doncaster* aforesaid in the county aforesaid: And this he is ready to verify: Wherefore he prays judgment, and his damages by reason of the non-performance of the promises and assumptions aforesaid, to be adjudged to him, &c.

AND now on this day, to wit, *Wednesday* next after 15 days of *Easter* in this same term, until which day the said *W. H.* had leave to imparl to the bill aforesaid and then to answer, &c. before the lord the king at *Westminster* comes as well the said *James* earl of *Brecknock* by his attorney aforesaid, as the said *William* by *Jeffery Woodward* his attorney: And the same *W.* defends the force and injury when, &c. and says that he is not thereof guilty: And of this he puts himself upon the country: And the said *James* earl of *Brecknock* thereof, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on next after and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; and the sheriff did not return thereof the writ: Therefore as before let a jury thereon come before the lord the king at *Westminster* on next after and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Before which day, to wit, after the said next after and before the said next after to wit, on the 9th day of *November* in the 34th year of the reign of the said lord the now king, the same lord the now king by his letters patent sealed under the great seal of *England*, bearing date at *Westminster* aforesaid the said 9th day of *November* in the 34th year of his reign aforesaid, and here in court produced, raised, constituted and created the said *James* earl of *Brecknock* to the state, degree, stile, title, dignity, name and honour of duke within this kingdom of *England*, by the name of duke of *Ormond*: On which said next after before the lord the king at *Westminster* comes as well the said *James* duke

duke of *Ormond*, who as well, &c. as the said *W. H.* by their attornies aforesaid; and the sheriff did not return thereof the writ: Therefore as before let a jury thereon come before the lord the king at *Westminster* on next after and who neither, &c. to recognise, &c. because as well, &c. The same day is given as well to the said *James* duke of *Ormond*, who as well, &c. as to the said *William Hetherington* there, &c.

Another.

This cause was tried at bar and 10000 l. damages given.

AND now on this day, to wit, *Wednesday* next after the octave of *St. Hillary* in this same term, until which day the said *M.* all and all manner of exceptions being saved to him as to the bill aforesaid, had leave to impari to the said bill and then to answer, before which day the said lady queen *Mary* departed this life, before the said lord the king at *Westminster* comes as well the said *Frances* by her attorney aforesaid, as the said *M.* by *A. B.* his attorney: And the same *M.* defends the force and injury when, &c. and prays oyer of the writing aforesaid; and to him it is read, &c. he prays likewise oyer of the condition of the same writing; and to him it is read in these words, to wit, The condition, &c. Which being read and heard the same *M.* prays judgment of the bill aforesaid, because he says that she the said *Frances*, at the said time of the exhibition of the bill of her the said *Frances* aforesaid, was lawfully and according to the laws of the church of *England* married to one *C. D.* her husband in the said bill not named: Wherefore the said *M.* prays judgment of the bill aforesaid, and that the said bill may be quashed.

Special imparlance.

Demise of the queen.

Prays oyer and pleads coverture in the plaintiff.

And the said *F.* says, that by any thing by the said *M.* above in pleading alledged the bill of her the said *F.* ought not to be quashed, because she says, that she the said *F.* at the time of the exhibition of the bill of her the said *F.* aforesaid, to wit, on the 23d day of *October* in the 6th year of the reign of the said lord the king and of the late lady *Mary* queen of *England*, &c. she was sole; without that, that the said *F.* at the said time of the exhibition of the bill aforesaid was married to the said *C. D.* as the said *M.* above in pleading hath alledged: And this she is ready to verify: Wherefore she prays judgment, and that the bill of the said *F.* may be adjudged as good, and for want of a sufficient answer her debt aforesaid, together with her damages by reason of the detention of that debt, to be adjudged to her, &c.

Plaintiff replies and traverses the coverture.

And the said *M.* as before says, that the said *F.* at the time of the exhibition of the bill aforesaid was married to the said *C. D.* in manner and form as the said *M.* above in pleading hath alledged: And of this he puts himself on the country: And the said *F.* thereof likewise: Therefore, &c.

[124]
Issue thereon.

AND the said *Henry* by *J. R.* his attorney comes and defends the force and injury, when, &c. and prays oyer of the writing aforesaid; and to him it is read, &c. he prays also oyer of the condition of the same writing; and to him it is read in these words,

Bar to debt upon a sheriff's bond conditioned to prosecute an action in replevin,

and to make a
return, &c.

That he did ap-
pear and prose-
cute, and that no
return was ad-
judged.

The sheriff, &c.
were not damp-
nified.

Repl. that the
plaint was re-
moved into C. B.
and that he did
not there prose-
cute.

Recordare sued.

words, to wit, The condition of this obligation is such, That if *John Wastorne* do appear at the next county-court to be holden at *Northampton*, and then and there do prosecute his action with effect against *John Stone* and *John Cooper*, for wrongfully taking and detaining his cattle, viz. two and twenty bullocks, as is alledged, and do also make return thereof, if return thereof shall be adjudged by law, and also do save and keep harmless and indemnified the above-named sheriff, his under sheriff and bailiff, for, touching and concerning the delivery of the said cattle, that then this present obligation to be void, otherwise to remain in full force and virtue: Which being read and heard, the same *Henry* says that the said *William* ought not to have his action aforesaid, against him, because he says that the said *John Wastorne* in the condition aforesaid mentioned did appear at the next county-court after the making of the writing obligatory aforesaid, to wit, on the fourth day of *February* in the eighth year above said, at *Northampton* aforesaid; before the said then sheriff held, and then and there prosecuted his action aforesaid in the condition aforesaid mentioned, with effect against the said *John Stone* and *John Cooper* in the condition aforesaid mentioned, for wrongfully taking and detaining his cattle, to wit, the said twenty-two bullocks in the same condition mentioned, and that no return thereof ever was yet adjudged: And also that the said late sheriff, his under-sheriff and bailiff, have not hitherto been dampnified, nor hath any of them been dampnified, for, touching or concerning the delivery of the said cattle or any of them: And this he is ready to verify: Wherefore he prays judgment if the said *William* ought to have his action aforesaid thereof against him, &c.

J. Girdler.

And the said *William Cuthbert* says, that he by any thing by the said *Henry* above in pleading alledged ought not to be precluded from his action aforesaid against him the said *Henry*, because he says that well and true it is, that the said *John Wastorne* in the condition aforesaid named did appear at the next county-court after the making of the writing obligatory aforesaid on the said fourth day of *February* in the eighth year above said before the then sheriff held, and did then and there prosecute his action aforesaid against the said *John Stone* and *John Cooper*, for wrongfully taking and detaining his cattle, to wit, twenty-two bullocks in manner and form as the said *Henry* above in pleading hath alledged; but the said *William* farther says that afterwards, to wit, on the day of in the year the said *John Cooper* and *John Stone* prosecuted out of the court of the said lord the king of chancery at *Westminster* a certain writ of the said lord the king, directed to the said sheriff of the county of *Northampton*, whereby the then sheriff was commanded, that in his full county he should cause to be recorded the plea then in the same county without the writ of the same lord the king, between the said *John Wastorne* and them the said *John Stone* and *John Cooper* for the cattle

cattle of him the said *John Wastorne* taken and unjustly detained, as it was said; And that he should have that record before the justices of the said lord the king at *Westminster* on the morrow of the assension of the Lord, under his seal and the seals of four lawful knights of the same county of those who were present at that record: And that he should prefix the same day to the parties that they should be then there to proceed in that plea as it should be just; And that he should have there the names of the four knights, and that writ: Which said sheriff at the said day of the return of that writ, did return to the same justices of the said lord the now king at *Westminster* aforesaid, that by virtue of that writ he had caused to be recorded the plea which was in his county without the writ of the lord the king between the parties aforesaid, in a plea of taking and unjustly detaining of cattle; And that he had that record before the justices aforesaid at the day and place aforesaid, under his seal and the seals of *W. H. J. S. J. S.* and *R. S.* four lawful knights of his county of those who were present at that record: And farther the same sheriff then and there returned in a schedule to the writ aforesaid annexed the plea aforesaid, which follows in these words, *Northampton* to wit, At my county held at the town of *Northampton* in the county aforesaid on the seventh day of *January* in the eighth year of the reign of the lord *William* the third, now king of *England*, &c. before *J. S. gent. W. M. gent. G. H. and W. K.* four suitors of that court, *J. W.* plaintiff against *J. S.* and *J. C.* in a plea of taking and unjustly detaining of his cattle, *W. C. esq;* sheriff, as by the writ and return aforesaid in the custody of the keeper of the writs of the bench here at *Westminster* aforesaid remaining filed on record more fully appears: And the same *W. C.* farther saith, that on the plea aforesaid afterwards, to wit, in *Hillary* term in the ninth year of the reign of the said lord the now king, the said *J. W.* declared in the said court of bench here against them the said *J. S.* and *J. C.* for this, that they on the 12th day of *January* in the eighth year of the reign of the said lord the now king, at *Bingley* in the county of *Northampton* aforesaid, in a certain close there called the *Great Meadow*, took the cattle, to wit, twenty-two bullocks of him the said *J. W.* and them unjustly detained against surety and pledges, until, &c. whereby the same *J. W.* then said he was prejudiced and had damage to the value of 500*l.* And therefore he produced the suit, &c. Whereupon the said *J. S.* and *J. C.* by *W. L.* their attorney came and defended the force and injury, when, &c. and as bailiffs of *J. G.* well acknowledged the taking of the cattle aforesaid in the said place, in which, &c. and justly, &c. because they said that the said place called the *Great Meadow*, in which the taking of the cattle aforesaid is supposed to be done, then and at the time in which, &c. did contain in itself 65 acres of meadow with the appurtenances in *Bingley* aforesaid, and that the said 65 acres of meadow with the appurtenances, in which,

The return.

[125]

The declaration
in *C. B.*

Cognisance.

Seisin in fee.

Marriage settle-
ment.

&c. long before the said time in which, &c. to wit, on the 28th day of *November* in the 36th year of the reign of the lord *Charles* the second, late king of *England*, &c. and long before, and from time immemorial, were parcel of the manor of *Bingley* with the appurtenances in *Bingley* aforesaid: Of which said manor with the appurtenances whereof, &c. one *E. G.* father of him the said *J. G.* on the same 28th day of *November* in the 36th year aforesaid, was seised in his demean as of fee: And he the said *E. G.* so of the manor aforesaid with the appurtenances, whereof, &c. in form aforesaid being seised, the same *E.* on the said 28th day of *November* in the 36th year aforesaid, at *Bingley* aforesaid in the county aforesaid, by his certain indenture then and there made between him the said *E. G.* by the name of *E. G.* of *Bingley* in the county of *Northampton*, esq; of the one part, and one *R. R.* by the name of *R. R.* of *Dallington* in the county aforesaid, esq; and the said *J. G.* by the name of *J. G.* son and heir apparent of the said *E. G.* of the other part, one part whereof sealed with the seal of the said *E. G.* the same *J. S.* and *J. C.* then in court produced, the date whereof is the same day and year, reciting that a marriage was then intended shortly to be had and solemnized between the said *J. G.* and *A. R.* daughter of the said *R. R.* Therefore in consideration of the said intended marriage and of the sum of 10000*l.* of lawful money of *England* to him the said *E. G.* as the marriage portion of the said *A.* by the said *R. R.* on or before the sealing and delivery of the said indenture well and truly paid, the receipt whereof he the said *E. G.* by the said indenture did acknowledge, and for the provision of a present maintenance for the said *J. G.* and *A. R.* during the life of the said *E. G.* in case the said intended marriage should take effect, he the said *E. G.* did grant to the said *J. G.* an annuity or yearly rent of 800*l.* of lawful money of *England*, to be issuing out of the manor of *Bingley* aforesaid, whereof the said place in which is parcel, and all and singular the lands, manors and hereditaments whatsoever of the said *E. G.* situate, lying and being in the said parish of *Bingley* aforesaid in the said county of *Northampton*; to have, hold, receive and yearly perceive, take and enjoy the said annuity or yearly rent of 800*l.* to the said *J. G.* and his assigns, for and during the term of 99 years, commencing immediately from and after the solemnization of the said intended marriage, and fully to be compleat and ended, if the said *E. G.* and *J. G.* should so long jointly live, and to be payable yearly at the four most usual feasts or times in the year, that is to say, the annunciation of the blessed virgin *Mary*, the feast of *St. John* the baptist, the feast of *St. Michael* the archangel and of the birth of our blessed Lord and Saviour *Jesus Christ*, by even and equal portions; the first payment thereof to begin and be made on the said feast of the annunciation next following the solemnization of the said intended marriage: And the said *E. G.* by the said indenture farther granted and agreed, that if it should happen

happen that the said annuity or yearly rent of 800*l.* or any part thereof, should be behind or unpaid at any the days or times on which the same ought to be paid, that then it should be lawful to and for the said *J. G.* in and upon the said manor, whereof the said place, in which, &c. is parcel, and the messuages, lands, hereditaments and premises, out of which the said yearly rent was granted or mentioned to be granted, issuing or mentioned to be issuing as aforesaid, and into every or any part and parcel thereof, at his and their liberty to enter and distrain for the said yearly rent of 800*l.* and the arrears thereof, and the distress and distresses then and there so found to take, lead, drive, carry away, impound, and impounded detain and keep until the said yearly rent of 800*l.* and all the arrears thereof, for which such distress or distresses should be made as aforesaid, should be fully satisfied, contented and paid to the said *J. G.* and his assigns, as by the same indenture among other things more fully appears: And the same *J. S.* and *J. C.* farther said, that he the said *J. G.* afterwards, to wit, on the 21st day of *December* in the 36th year aforesaid at *Bingley* aforesaid in the county aforesaid, did take her the said *A. R.* for his wife, and by virtue thereof and of the grant aforesaid, afterwards, to wit, on the first day of *April* then next following, at *Bingley* aforesaid in the county aforesaid, then was lawfully possessed of the rent aforesaid, and because 1000*l.* of the rent aforesaid for one year and a quarter of a year, ended at the feast of the nativity of our blessed Lord and Saviour *Jesus Christ* in the year of the Lord 1696; and at the said time, in which, &c. to the same *J.* were in arrear and unpaid, the said *J. S.* and *J. C.* as bailiffs of the said *J. G.* well acknowledge the said taking of the cattle aforesaid in the said place, in which, &c. and justly, &c. for the said 1000*l.* of the rent aforesaid, as in land chargeable and bound to the distress of the said *J.* in form aforesaid: And this the same *J. S.* and *J. C.* were ready to verify: Wherefore they prayed judgment and a return of the cattle aforesaid, together with their damages, costs and charges, according to the form of the statute in such case made and provided, to be adjudged to them; with this that the same *J. S.* and *J. C.* did aver that the said *E. G.* and *J. G.* were then surviving and in full life, to wit, at *Bingley* aforesaid, in the county aforesaid: And the said *J. W.* then said, that the said *J. S.* and *J. C.* the taking of the cattle aforesaid as bailiffs of the said *J. G.* in the said place, in which, &c. for the reason before alledged ought not to acknowledge just, because he said that the said *J. S.* and *J. C.* on the day and year aforesaid in the declaration aforesaid mentioned, did of their own wrong take the said twenty-two bullocks in the manner as the said *J. W.* by his writ and declaration aforesaid above had supposed; without that that the said *E. G.* in the cognisance aforesaid above-mentioned, granted to the said *J. G.* the said annuity or yearly rent of 800*l.* in manner and form as the said *J. S.* and *J. C.*

[126]

Replication

D. iniuria sua propria.

Traverse.

Rejoinder.

Issue.

13 Ed. 1. c. 30.

12 Ed. 2. c. 4.

14 Ed. 3. c. 16.

Postea.

Non-suited and
so, &c.

by their cognisance afore said above had alledged: And that he was ready to verify: Wherefore he prayed judgment, if the said *J. S.* and *J. C.* ought to maintain their cognisance afore said against him, &c. And the said *J. S.* and *J. C.* said that the said *E. G.* in the cognisance afore said abovementioned, did grant to the said *J. G.* the said annuity or yearly rent of 800*l.* in manner and form as the said *J. S.* and *J. C.* by their cognisance afore said above had alledged: And of that they put themselves on the country: And the said *J. W.* thereof likewise, &c. Therefore the sheriff was commanded that he should cause to come in the octave of the purification of the blessed *Mary* 12 &c. by whom, &c. and who neither, &c. to recognise, &c. because as well, &c. Afterwards the process thereof between the parties afore said in the plea afore said by the jury thereon between them being respited before the justices of the lord the king at *Westminster* in 15 days, unless the justices of the lord the king assigned to take assises in the county afore said by form of the statute, &c. on *Tuesday* the 15th day of *March* at *Northampton* in the county afore said, should first come for want of jurors, &c. On which day before the justices of the lord the king at *Westminster* afore said came the said *J. S.* and *J. C.* by their attorney afore said: And the said justices of the lord the king of assise, before whom, &c. sent here their record before them had in these words, to wit, afterwards the day and place within contained, before *John Powell*, knt. one of the justices of the lord the king of the bench, and *George Dodson*, esq; to the same *John Powell*, knt. and *N. L.* one of the barons of the exchequer of the said lord the king, justices of the said lord the king assigned to take assises for the county of *Northampton*, by the form of the statute, &c. for this time associate, the presence of the said *N. L.* not being expected, by virtue of the writ of the said lord the king of *Si non omnes*, &c. came as well the within named *J. W.* as the within written *J. S.* and *J. C.* by their attornies within contained: And the jurors of the jury, whereof mention is within made, being called likewise came, who to say the truth of the within contained were elected, tried and sworn, &c. and were agreed and returned back to the bar here to give that verdict; whereupon the said *J. W.* altho' solemnly called did not come, nor did farther prosecute his writ afore said against the said *J. S.* and *J. C.* as by the record thereof in the court of the bench here at *Westminster* afore said remaining more fully appears; and so the said *W. C.* says that the said *J. W.* did not prosecute his plea afore said with effect according to the form and effect of the condition of the writing obligatory afore said: And this the same *W. C.* is ready to verify by that record: Wherefore he prays judgment and his debt afore said, together with his damages by reason of the detention of that debt, to be adjudged to him, &c.

WHEN,

Statute of 23
H. 6. c. 12.
pleaded to a bail-
bond.

[127]

WHEN, &c. And prays oyer of the writing obligatory afore-
foresaid; and to him it is read, &c. he prays also oyer of
the condition of the same writing obligatory; and to him it is
read in these words, to wit, the condition of this obligation is
such, that if the above bounden *Edward Kitchener* do appear
before the said lady the queen at *Westminster* on *Tuesday* next after
the morrow of *All Souls*, to answer *Richard Browning* in a plea of
trespass, and also a bill of debt for 60*l.* according, &c. then this
obligation to be void, or else to remain in full force, strength and
virtue: Which being read and heard, the said *Benjamin* says,
that he ought not to be charged by virtue of the writing obli-
gatory afore said, because he says, that before the making of the
writing obligatory afore said, to wit, by a certain act made in a
parliament of the lord *Henry* the sixth, held at *Westminster* in
the county of *Middlesex* on the 25th day of *February* in the
23d year of his reign, it was among other things enacted by the
authority of the same parliament, that no sheriff, under-sheriff,
sheriff's clerk, steward or bailiff of franchise, servant of bailiff
or coroner, should take any thing by colour of his office, by
him nor by any other person to his use, of any person for the
making of any return or panel, and for the copy of any panel,
but 4*d.* And that the said sheriffs, and all other officers and
ministers afore said, should let out of prison all manner of per-
sons by them or any of them arrested or being in their cus-
tody by force of any writ, bill or warrant in an action personal,
or by reason of indictment by trespass, upon reasonable sureties
of sufficient persons having sufficient within the counties where
such persons be so let to bail or mainprise, to keep their days in
such place as the said writs, bills or warrants should require
(such person or persons which were or should be in their ward
by condemnation, execution, *capias utlegatum* or *excommunicatum*,
surety of the peace, and all such persons which were or should
be committed to ward by special commandment of any justices,
and vagabonds refusing to serve according to the form of the
statute of labourers, only excepted): And that no sheriff, nor
any of the officers or ministers afore said, should take, or cause
to be taken, or make any obligation for any cause afore said, or
by colour of their office, but only to themselves, of any per-
son, nor by any person which should be in their ward by the
course of the law, but by the name of their office, and upon
condition written that the said prisoners should appear at the day
contained in the said writ, bill or warrant, and in such places as
the said writs, bills or warrants should require; and if any of
the said sheriffs, or other officers or ministers above said, take
any obligation in other form by colour of their offices, that it
should be void, as by the same act, among other things, more
fully appears: And the same *Benjamin* says, that after the mak-
ing of the said act, to wit, at the said time of the making of
the writing obligatory afore said, the said *Edward Kitchener* was

arrested by the said sheriff of the county aforesaid by a precept of the said lady the queen, called a bill of *Middlesex*, to the same sheriff of *Middlesex* directed, issuing out of the court of the said lady the queen before the queen herself here, to wit, at *Westminster* aforesaid, returnable before the queen herself at *Westminster* aforesaid on *Wednesday* next after the morrow of *All Souls* then next following, to answer to the said *Robert Browning* in a plea of trespass, and also to the bill of the said *Robert* against the said *Edward* for 60*l.* on debt, and that the said *Benjamin Greene* and *Charles Peers* being then sheriff of the county of *Middlesex* aforesaid, of and upon that arrest took bail, the writing obligatory aforesaid with the condition aforesaid, for ease and favour to the same *Edward Kitchener* of his imprisonment by the said *Benjamin Greene* and *Charles Peers* shewn, and to have and obtain his deliverance therefrom; which said writing obligatory the said *Benjamin Greene* and *Charles Peers* took by colour of his office against the form of the statute aforesaid; and so the same *Benjamin* says, that the writing obligatory aforesaid here in court produced in form aforesaid, and for the cause aforesaid, as before mentioned, taken and made by force of the statute aforesaid, is void in law: And this the same *B. S.* is ready to verify: Wherefore he prays judgment if he the same *B. S.* ought to be charged with the debt aforesaid by virtue of the writing obligatory aforesaid, &c.

Demurrer to a
plea in debt on
bond.

And the said *Robert Browning* says, that he by any thing by the said *Benjamin Suran* above in pleading alledged ought not to be precluded from his action aforesaid thereof against him the said *Benjamin* had, because he says, that the plea aforesaid by the said *Benjamin* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *Robert* from his action aforesaid thereof against him the said *Benjamin* had; to which said plea in manner and form aforesaid above pleaded, he the same *Robert* hath no necessity, nor is by the law of the land obliged, in any manner to answer: And this he is ready to verify: Wherefore for want of a sufficient plea in this behalf, the same *Robert* prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c.

Joined in de-
murrer.

And the said *Benjamin* says, that the plea aforesaid by him the said *Benjamin* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to preclude him the said *Robert* from his action aforesaid thereof against him the said *Benjamin* had; which said plea, and the matter therein contained, the same *Benjamin* is ready to verify and prove, as the court, &c. And because the said *Robert* doth not answer to that plea, nor the same hitherto deny, the same *Benjamin* as before prays judgment, and that the said *Robert* may be precluded from his action aforesaid thereof against him the said *Benjamin* had, &c. But because the court of the

said

saïd lady the now queen here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lady the queen at *Westminster* until day next after to hear their judgment of and upon those premisses, because the court of the saïd lady the now queen here thereof not yet, &c.

Peytoe against Hyde.

[128]

Hill. 8th of queen Anne.

Declaration on a bond for 200*l.* dated 28th *May* 1709, conditioned for the payment of 100*l.* with interest at 4*l.* per cent. per ann. on the 31st day of *July* then next following the date. The defendant pleads as follows:

AND the saïd *Nathaniel* in his proper person comes and defends the force and injury, when, &c. and prays oyer of the writing obligatory aforesaid; and to him it is read, &c. he also prays oyer of the condition of the same writing; and to him it is read in these words: The condition of this obligation is such, that if the above-bounden *John Rice* and *Nathaniel Hyde*, or either of them, their, or either of their heirs, executors or administrators, do well and truly pay, or cause to be paid, unto the above-named *John Peytoe*, his executors, administrators or assigns, the full sum of 100*l.* with interest at 4*l.* per cent. per ann. of good and lawful money of *Great Britain*, on the last day of *July* next ensuing the date hereof, at one whole and intire payment without fraud or delay; then this obligation to be void, or else to remain in full force: Which being read and heard, the same *Nathaniel* says, that the saïd *John Peytoe* ought not to have or maintain his action aforesaid thereof against him, because he says, that the saïd *John Rice* in the condition aforesaid above mentioned paid to the saïd *John Peytoe* the saïd 100*l.* with interest for the same according to the rate of 4*l.* per cent. per ann. on the 20th day of *July* next following the date of the writing obligatory aforesaid, to wit, at *Westminster* aforesaid in the county aforesaid: And this he is ready to verify: Wherefore he prays judgment if the saïd *John Peytoe* ought to have or maintain his action aforesaid thereof against him the saïd *Nathaniel*, &c.

Payment before
the day pleaded
to debt on bond.
Cro. Jac. 435.
5 Co. 117.

And the saïd *John Peytoe* says, that he by any thing by the saïd *Nathaniel* above in pleading alledged ought not to be precluded from his action aforesaid thereof against him the saïd *Nathaniel* had, because he says, that the plea aforesaid by him the saïd *Nathaniel* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude him the saïd *John* from his action aforesaid thereof against the saïd *Nathaniel* had; to which saïd plea he the same *John* hath no necessity, nor is by the law of the land bound in any manner to answer: And this he is ready to verify: Wherefore for want of a sufficient answer in this behalf, he the saïd *John* prays judgment

Demurrer.

Causes assigned.

27 El. c. 5.
4 Ann. c. 16.
3 Lev. 293.
Cro. Jac. 435.
Yelv. 196.
Benl. 151.

and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c. And for causes of demurrer in law in this behalf the same *John*, according to the form of the statute in such case lately made and provided, sets down and to the court here expresses these causes following, to wit, For that if such payment was made by the said *John Rice* of the said 100 *l.* and the interest then due, as the said *Nathaniel* above hath pleaded, the same *Nathaniel* ought to plead that payment was made on the day in the said condition of the writing aforesaid mentioned, and that the matter aforesaid so pleaded is only matter of evidence to prove that issue; and the said *Nathaniel* ought to plead such payment in such manner that issue might be thereon joined; and for that the plea aforesaid doth not contain in itself any matter on which issue can be joined; and the plea is uncertain, double, and wants form, &c.

Edw. Whitaker.

Joinder in demurrer.

And the said *Nathaniel* says, that the plea aforesaid by him the said *Nathaniel* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to preclude him the said *John* from his action aforesaid thereof against him the said *Nathaniel* had; which said plea, and the matter in the same contained, he the said *Nathaniel* is ready to verify and prove, as the court, &c. And because the said *John* doth not answer to that plea, nor hitherto any way deny the same, he the same *Nathaniel* as before prays judgment, and that the said *John* may be precluded from his action aforesaid thereof against him had, &c. But because the court of the said lady the now queen here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the lady the queen at *Westminster* until day next after to hear their judgment of and upon those premises, because the court of the said lady the queen now here thereof not yet, &c.

[129]

Plea to an action of assault by husband and wife that on the arrest of the husband the wife assaulted them. &c.
Parl. Rep. 200.

AND the said *Jonathan Darby* and *Henry Mills* by *J. A.* their attorney come and defend the force and injury, when, &c. And as to the coming with force and arms, or any thing that is against the peace of the lord the now king, the same *J.* and *H.* say, that they are not thereof guilty; And of this they put themselves on the country; and the said *Joseph* and *N.* thereof likewise, &c. And as to the residue of the trespasss and assault aforesaid above supposed to be committed, the same *J.* and *H.* say, that the said *Joseph* and *Mary* ought not to have or maintain their action thereof against them, because they say, that the town of *Guildford* in the county aforesaid is and from time immemorial was an ancient town; and that before the time when the trespasss and assault aforesaid is supposed to be committed, to wit, on the day of in the sixth year of the reign of the now king, one *Henry Wyatt*, esq; came into the court of the said

said lord the now king of his town of *Guildford* aforesaid, then held before one *T. P.* the then mayor, and the good men of the town of *Guildford* aforesaid within the same town, according to the custom, liberty and privilege of the town aforesaid, from time out of mind used and approved in the same, in his proper person, and then and there the same *H. W.* levied a certain plaint against the said *Joseph Cooper* in a plea of trespass on the case, to the damage of him the said *H. W.* 5*l.* and then and there found pledges to prosecute his plaint aforesaid, to wit, *J. Doe* and *R. Roe*, and then and there prayed process to be made for him against the said *Joseph* in the plea aforesaid according to the custom of the town aforesaid, which then and there was granted to him; whereupon at the same court then and there, according to the custom of the town aforesaid, at the petition of the said *W. H.* it was in such manner proceeded, that the said court then and there, according to the custom of the town aforesaid, commanded the serjeants at mace and ministers of the court aforesaid that they should take, or one of them should take, the said *Joseph Cooper*, if he should be found within the liberty of the town aforesaid, and him should safely keep, so that they might have his body at the then next court of the said lord the king of record of the town aforesaid before the said mayor and good men of the town aforesaid, to be held to answer to the said *J. W.* in the plea of his plaint aforesaid, according to the custom of the town aforesaid: By virtue of which said precept the said *H. Mills*, then being serjeant at mace of the town aforesaid, and minister of the court aforesaid, afterwards and before the then next court of the town of *Guildford* aforesaid, to wit, the said day of in the sixth year above said at *Guildford* aforesaid within the jurisdiction of the same court, took and arrested the said *Joseph*, and would have and endeavour'd to carry him the said *Joseph* to the prison of the said lord the king of the town aforesaid at *Guildford* aforesaid within the jurisdiction of the court aforesaid, for want of bail: And the same *H. Mills* farther says, that the said *Joseph* being under the custody of the said *Henry* for the cause aforesaid, as is before mentioned, he the said *Joseph* afterwards, and before the said next court of the town aforesaid, after the arrest aforesaid, to wit, on the said day, &c. in the sixth year above said, with force and arms out of the custody of the said *Henry*, against the will of the said *Henry*, then and there rescued himself and escaped, and went to places to the same *Henry* unknown; whereupon the same *Henry* called the said *Jonathan*, another serjeant at mace of the town aforesaid, to his assistance to retake the said *Joseph*: And the same *Henry* and *Jonathan* at *Guildford* aforesaid within the jurisdiction of the court aforesaid the said *Joseph*, after the said escape as aforesaid made, recently pursued, and made and continued that pursuit from thence from place to place within the liberty of the town aforesaid and jurisdiction of the court aforesaid, until afterwards, to wit, at the time in which,

which, &c. they did retake and arrest the said *Joseph* in that pursuit, at *Guildford* aforesaid within the jurisdiction of the court aforesaid, as they lawfully might: And the same *Henry* and *Jonathan Mills* farther say, that the said *Mary* upon that retaking and arrest then and there with force and arms made an assault on them the said *Jonathan* and *Henry*, and would and did endeavour to have rescued and escaped the said *Joseph* out of the custody of the said *Jonathan* and *Henry*, and also would have then and there beaten, wounded and abused them the said *Jonathan* and *Henry Mills*, unless they the same *Jonathan* and *Henry Mills* had then and there defended themselves against the said *Mary*: And so the same *Jonathan* and *Henry Mills* say, that if any damage or ill then and there happened to the said *Mary*, it was from the proper assault of the said *Mary*, and in the defence of them the said *Jonathan* and *Henry Mills*, which is the same residue of the trespass and assault aforesaid whereof the said *Joseph* and *Mary* above now complain: And this they are ready to verify: Wherefore they pray judgment if the said *Joseph* and *Mary* ought to have or maintain their action aforesaid thereof against them, &c.

R. Ackerly.

Covenant.

Covenant.

[130]

Bagnall against Billingay.

Midd., to wit.

HENRY Billingay late of *Islington* in the county of *Middlesex* afore said, innholder, was summoned to answer to *Gibbons Bagnall*, gent. in a plea that he keep to him the covenant between the said *Gibbons* and one *Robert Butler* deceased, whom the said *Gibbons* survived in the life-time of the said *Robert* made according to the force, form and effect of a certain indenture thereof between them made: And whereon the said *Gibbons* by *R. C.* his attorney says, that whereas by a certain indenture made at *Islington* afore said in the county afore said, on the 28th day of *April* in the year of our Lord 1710, between the said *Gibbons* and *Robert* in the life-time of the said *Robert*, by the names of *Gibbons Bagnell* of *London*, gent. and *Robert Butler* of *Chelsea* in the county of *Middlesex*, gent. of the one part, and the said *Henry Billingay*, by the name of *Henry Billingay* of *Islington* in the county of *Middlesex*, innholder, of the other part, which other part sealed with the seal of the said *Henry* the said *Gibbons* here in court produces, the date whereof is the same day and year above said, the said *Gibbons* and *Robert* in the life-time of the said *Robert*, for the consideration in the same indenture mentioned, had demised and to farm let, and each of them had demised and to farm let, and then by the same indenture did demise and to farm let and each of them did demise and to farm let, to the same *Henry Billingay* all that messuage or inn consisting of a certain four-square building, which said messuage or inn was then called or known by the name or sign of the *Angel*, situate and being in or near *Islington* afore said in the parishes of *St. James Clerkenwell* and *Islington* afore said, or one of them, in the county of *Middlesex* afore said, and then was in the tenure or occupation of the said *Henry Billingay*, and all that little close or parcel of land lying behind the said messuage, containing by estimation two acres or thereabouts, and all those sheep-houses, with all sheep-pens standing and being under the said sheep-houses, and all and singular out-houses, edifices, buildings, barns, stables, chambers, rooms, cellars, solars, yards, gardens, back-sides, ways, waters, water-courses, easements, profits, commodities and appurtenances whatsoever to the said messuage, teneiment or inn, close

Covenant by a
surviving lessor
against tenant
for years.
Pract. Reg.
345, 352.

Indenture of
lease.

Premises.

[131]

Exception.

Habendum.

Reddendum.

Covenant to pay
the rent.

close of land and sheep-houses belonging or any ways appertaining: and also so much of the close called *Conduit Field* as then was fenced, containing by estimation 26 acres and two roods, be it more or less, one close or parcel of land, commonly called or known by the name of the *Great Stonyfield*, containing by estimation 13 acres and 21 perches, more or less, and one other close or parcel of land called, &c. (reciting several other parcels) all which said closes or parcels of land are parcel of the manor of *Barnesbury*, otherwise *Barnadsbury*, lying in or near to *Islington* aforesaid in the parishes of *St. James Clerkenwell* and *Islington* aforesaid, or one of them, in the said county of *Middlesex*, and then were in the tenure and occupation of the said *Henry Billington*, together with free liberty of ingress and regress to and for the said *Henry Billington*, his executors, administrators and assigns, with his and their horses, carts and all other kind of cattle, into, out of and from the said premises by the indenture aforesaid demised, during the continuance of the lease aforesaid, with all advantages and privileges thereunto belonging, to which or with which the said *Gibbons Bagnall* and *Robert Butler*, or either of them, could any way intitle and accommodate him the said *Henry Billington* concerning the premises aforesaid by the said indenture demised; saving and excepting to all and every person and persons such right of any way or ways, passage or passages, in, thro' and from the said premises, or any part thereof, which to them then belonged and had been by them enjoyed; To have and to hold the said messuage, tenement or inn, the little close or parcel of land lying behind the said messuage, and all and singular the aforesaid other closes or parcels of land, and other the premises, by the said indenture before demised or mentioned so to be, with their and every of their appurtenances (except before excepted) unto the said *Henry Billington*, his executors, administrators and assigns, from the feast-day of *St. Michael* the archangel then next following the date of the said indenture unto the full end and term of five years from thence next ensuing and fully to be compleat and ended; Yielding and paying therefore yearly and every year during the said term unto the said *Gibbons Bagnall* and *Robert Butler*, their heirs and assigns, the rent or sum of 500*l.* of lawful money of *Great Britain* at the four most usual feast-days or terms of the year, that is to say, the feast-day of the birth of our Lord *Jesus Christ*, the feast-day of the annunciation of the blessed virgin *Mary*, the feast-day of *St. John* the baptist, and the feast-day of *St. Michael* the archangel, by even and equal portions: And the said *Henry Billington* for himself, his heirs, executors, administrators and assigns, and for every of them, did covenant, promise and grant to and with the said *Gibbons Bagnall* and *Robert Butler*, their heirs and assigns, by the said indenture, that he the said *Henry Billington*, his executors, administrators and assigns, during the said term by the said indenture demised, would well and truly pay, or cause to be paid, to the said *Gibbons Bagnall* and *Robert Butler*, their heirs and assigns, the said yearly rent and sum of 500*l.* of lawful money
of

of Great Britain, and every part thereof, in such manner and payments as in the said indenture were before-mentioned and expressed, as by the same indenture, among other things, is more fully manifest and doth appear: By virtue of which said demise the said *Henry Billingay* afterwards, to wit, on the morrow of the said feast of St. *Michael* the archangel next after the date of the indenture aforesaid, into the said messuage or inn, and all and singular other the demised premises aforesaid with the appurtenances entred, and was thereof possessed always from thence after until and after the feast-day of St. *Michael* the archangel in the year of the Lord 1713: And the same *Gibbons* in fact says, that after the making of the indenture of demise aforesaid, to wit, on the 10th day of *March* in the 12th year of the reign of the lady *Anne*, now queen of Great Britain, &c. the said *Robert Butler* at *Islington* aforesaid in the county aforesaid died; and the said *Gibbons Bagnall* him the said *Robert Butler* survived, and was seised of the reversion of the messuage and tenements aforesaid with the appurtenances above demised in his demesne as of fee, by right of survivorship: And altho' he the said *Gibbons* and the said *Robert Butler* in the life-time of the said *Robert*, and he the said *Gibbons* after the death of the said *Robert*, always from the said time of the making of the indenture of demise aforesaid hitherto have well and truly performed and fulfilled all and singular the covenants, grants and agreements in the indenture of demise aforesaid contained, on the part of the said *Gibbons Bagnall* and *Robert Butler*, their heirs and assigns, to be performed and fulfilled, by protesting, that the said *Henry Billingay* hath not performed or fulfilled any covenants or grants in the same indenture contained on the part of the said *Henry Billingay*, or his assigns, to be performed and fulfilled, in fact the same *Gibbons* says, that at the feast-day of the nativity of St. *John* the baptist now last past 125 *l.* of the yearly rent aforesaid, for one quarter of a year then ended at the same feast, to the same *Gibbons* after the death of the said *Robert* were in arrear and unpaid, and that the said *Henry* did not pay the same *Gibbons* the same 125 *l.* at that feast-day; and that at the feast-day of St. *Michael* the archangel now last past other 125 *l.* of the yearly rent aforesaid, for another quarter of a year then ended at the same feast, to the same *Gibbons Bagnall* after the death of the said *Robert Butler* became in arrear and were unpaid, and that the said *Henry* did not pay to the same *Gibbons* the same 125 *l.* at that feast-day; which said several sums of money the said *Henry Billingay* ought to have paid to the same *Gibbons Bagnall* at those several feast-days, according to the form and effect of the indenture aforesaid, but those several sums of money are yet unpaid: And so the said *Gibbons Bagnall* says, that the said *Henry Billingay*, altho' often required, his covenant with the same *Gibbons* and the said *Robert Butler* in his life-time as aforesaid made to the same *Gibbons Bagnall* after the death of the said *Robert* hath not kept, but hath unjustly broke it, and hath hitherto altogether denied, and yet doth

Entry of the defendant.

Averment of the death of one of the lessors.

Averment of performance, &c. on the plaintiff's part.

Breach in non-payment of two quarters rent.

doth deny to keep it with him, to the damage of him the said *Gibbons Bagnall* 500*l.* And therefore he produces the suit, &c.

[132]

Child against Howe.

Covenant against
an administra-
trix.

Midd', to wit.

John Child, esq; complains of *Lucy Howe*, widow, administratrix of all and singular the goods and chattels, rights and credits, which belonged to *Thomas Howe*, esq; her late husband deceased, otherwise lately called, &c. in the custody of the marshal, &c. in a plea of breach of covenant for this, to wit, that whereas by a certain indenture made at *Westminster* in the said county of *Middlesex* on the 24th day of *April* in the year of the Lord 1700, between the said *Thomas Howe* in his life-time, by the name of *Thomas Howe* of the *Inner Temple*, *London*, esq; of the one part, and him the said *John Child*, by the name of *John Child* of the *Middle Temple*, *London*, esq; of the other part; one part of which said indenture, sealed with the seal of the said *Thomas Howe* in his life-time, the same *John Child* here in court produces, the date whereof is the same day and year, reciting, among other things, that whereas the said *Thomas Howe* was indebted to the said *John Child* by a certain note under his hand in the sum of 39*l.* for which sum he had agreed to pay interest, he the said *Thomas Howe* (among other things) did covenant with the said *John Child* to pay him the said 39*l.* with interest accordingly, as by the same indenture, among other things, more fully appears: And the said *John Child* by protesting that the said *Thomas Howe* in his life-time, or the said *Lucy* after the death of the said *Thomas*, have not performed any covenants or grants in the indenture aforesaid contained on his part to be performed, in fact says, that the said *Thomas Howe* before the making of the said indenture, to wit, on the 16th day of *October* in the 11th year of the reign of the lord the now king at *Westminster* aforesaid, by his note aforesaid, became and was to the same *John Child* indebted in the sum aforesaid; and that he the said *Thomas Howe* in his life-time, or the said *Lucy* after the death of him the said *Thomas Howe*, altho' often required, the said 39*l.* with interest, or any part thereof, to the same *John* have not paid, nor hath either of them paid, but have refused to pay him the same, and the said *Lucy* doth yet refuse to pay him them; to which said *Lucy*, after the death of the said *Thomas*, administration of all and singular the goods and chattels, rights and credits, which belonged to the said *Thomas* at the time of his death, was duly committed, to wit, at *Westminster* aforesaid: And so the said *John Child* says, that the said *Thomas* in his life-time, and the said *Lucy* after the death of him the said *Thomas*, altho' often required, the covenant of the said *Thomas* aforesaid in this behalf with the said *John* as aforesaid made to the same *John* have not performed, but have wholly broke it, and have denied to perform it to him, and the said *Lucy* doth yet altogether deny

Breach.

deny to perform it to him, to the damage of the said *John Child* 50*l*. And therefore he produces the suit, &c.

South'ton, to wit.

A. L. widow, complains of *J. E.* knight. *T. H.* esq; and *M. F.* assignees of *T. H.* esq; deceased, being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, in a plea of breach of covenant for this, to wit, that whereas one *A. M.* widow, on the 8th day of *June* in the year of the Lord 1652, was seised in her demesne as of fee of and in one messuage or tenement and farm, with the appurtenances, called *Abbotts Barton*, otherwise *H. B.* situate and being in the parish of *St. B.* near the city *W.* in the county of *S.* aforesaid; and being so thereof seised the same *A. M.* by her indenture made the 8th day of *June* in the year above said, at the parish of *St. B.* in the county of *S.* above said, between her the said *A. M.* by the name of *A. M.* of *W.* in the parish of *E.* in the county of *S.* widow, of the one part, and the said *T. H.* in his life-time, by the name of *T. H.* of *H. P.* in the county of *B.* esq; of the other part, which other part sealed with the seal of the said *T. H.* in his life-time the same *A. L.* here in court produces, bearing date the same day and year, did demise, grant and to farm let, to the said *T. H.* in his life-time, all that messuage or tenement and farm, with the appurtenances, called or known by the name of *A. B.* otherwise *H. B.* situate and being in the parish of *St. B.* near the city *W.* in the said county of *S.* and all and singular houses, edifices, buildings, barns, stables, yards, orchards, gardens, backslides, lands and tenements, meadows, pastures, feedings, commons, common of pasture, ways, waters, watercourses, easements, profits, advantages, emoluments and hereditaments whatsoever to the said messuage, tenement or farm, belonging or in any wise appertaining, or to or with the same demised, used, occupied or enjoyed, or accepted, reputed, taken or known as part, parcel or member of the said messuage or farm, or thereunto belonging, with their and every of their appurtenances, (except and alway reserved out of the said demise to the said *A. M.* her executors and assigns, all timber and timber-trees, and trees of all kind whatsoever then standing, growing or being in or upon the premises, or any part thereof, with free ingress and regress with her or their carts and carriages or servants, to fell, cut down and carry away the same at her and their will and pleasure during the term by the said indenture granted; To have and to hold the messuage, farms, lands, tenements meadows, pastures, feedings, and all and singular the premises by the said indenture before mentioned and demised, and every part and parcel thereof, with their and every of their appurtenances, (except before excepted) to the said *T. H.* his executors, administrators, and assigns, from the feast of *St. Michael* the archangel next ensuing the date of the said indenture unto the full end and term of 21 years from thence next ensuing and fully to be compleat and ended; yielding and paying therefore yearly and

Covenant by a devisee against the assignee of a term.

Seisin in fee.

Lease made.

[133]

Habendum.

Reddendum.

Covenant to repair.

Entry of the lessee.

The executors of the lessee enter.

and every year during the said term to the said *A. M.* her executors, or assigns, at or in common dining-hall of *Lincoln's Inn* in the county of *Middlesex*, the rent or sum of 200 *l.* of lawful money of *England* at two usual feasts and terms in the year, that is to say, on the feast of the annunciation of the blessed virgin *Mary* and *St. Michael* the archangel by even and equal portions: And the said *T. H.* in his life time for himself, his executors and administrators, did covenant and grant to and with the said *A. M.* her executors, administrators and assigns, by the said indenture, that he the said *T. H.* his executors, administrators and assigns or some of them, from time to time, and at all times then after during the said term, at his and their own proper costs and charges would well and sufficiently repair and keep the house, messuage or tenement, barns, stables, out-houses, and other the edifices and buildings then standing in and upon the premises, or any part thereof, in, by and with all and all manner of needful and necessary reparations and materials whatsoever, and also all the hedges, ditches, gates, stiles, fences and watercourses of and belonging to the said premises, with hedges, ditches, gates, stiles, fences and cleansing, when, where, and as often as need should require, would likewise repair, scour, cleanse, maintain, and keep, and the said messuage or tenement, barns, stables, edifices and other the premises, so well and sufficiently repaired, maintained, hedged, ditched, fenced and kept, at the end and expiration, or other sooner determination of the said term, would peaceably and quietly into the hands and possession of the said *A. M.* her executors or assigns, leave and deliver, as by the same indenture, among other things, is more fully manifest and appears: By virtue of which said demise the same *T. H.* in his life time into the tenements aforesaid with the appurtenances entred, and was thereof possessed, the reversion of the tenements aforesaid to the said *A. M.* and her heirs belonging: And the said *T. H.* of the tenements aforesaid with the appurtenances being being so as aforesaid possessed, and the said *A. M.* being of the reversion of the tenements aforesaid seised in her demesne as of fee, the said *T. H.* afterwards, to wit, on the 20th of *February*, in the year of the Lord, &c. at the parish of *St. B.* in the county of *S.* aforesaid, made his last will and testament in writing, and then and there constituted the said *J. E. T. H.* and *M. F.* his executors of his said will, and afterwards there died of the tenements aforesaid with the appurtenances, as is before mentioned, possessed; after whose death the said *J. E. T. H.* and *M. F.* took upon themselves the execution of the said will, and into the said tenements with the appurtenances, to the same *T. H.* in form so as aforesaid demised, entred, and were thereof possessed, the reversion of the tenements aforesaid to the said *A. M.* and her heirs as aforesaid belonging, of which said reversion the said *A. M.* was seised as aforesaid in her demesne as of fee: And the said *A. M.* so of the reversion of the tenements aforesaid, as is before mentioned, being seised, the same *A. M.* afterwards, to wit, the 23d day of *April*

April in the year of the Lord, &c. at the parish of St. B. in the county aforesaid, made her last will and testament in writing, and by the same last will, among other things, willed and devised all the said tenements with the appurtenances to J. L. knight of the Bath deceased, and to the said A. L. then the wife of the said J. L. and the survivors of them, for and during their lives and the life of the survivor of them, and afterwards, to wit, on the last day of *April* in the 15th year of the reign of the lord Charles the second, now king of England, &c. at the said parish of St. B. in the county of S. aforesaid died of the reversion of the tenements aforesaid with the appurtenances in form aforesaid seized; after whose death the said J. L. and A. his wife, by virtue of the devise aforesaid, were seized of and in the said reversion of the tenements aforesaid, with the appurtenances, in their demesne as of freehold for the term of their lives and the life of the longer liver of them; and afterwards, to wit, on the last day of *December* in the 20th year of the reign of the said lord the now king, at the said parish of B. in the county of S. aforesaid, the said J. L. died of such his estate therein seized, and the said A. L. him the said J. L. then and there survived, and was and yet is thereof sole seized in her demesne as of freehold: And the same A. L. farther says, that altho' she the said A. M. in her life, and the said J. L. and A. L. in the life time of the said J. after the death of the said A. M. and the said A. L. after the death of the said J. L. well and faithfully performed and fulfilled all and singular the covenants, grants and agreements in the indenture aforesaid above specified on the part of them the said A. M. J. L. and A. L. to be observed, performed and fulfilled, according to the force, form and effect of the indenture aforesaid; yet the same A. L. in fact says, that during the term aforesaid, and after the death of the said T. H. to wit, 28th day of S. in the 25th year of the reign of the lord Charles the second, now king of England, &c. the glass was broke, spoiled, taken and torn from the windows of the messuage aforesaid, containing 40 feet, to the value of 40s. and the same messuage of the price of 200*l.* for want of sufficient tiling, plaistering and glazing, was ruinous, unrepaired and in decay, so that by the rain falling thereon, and by force of the wind blowing thereon, the timber of the said messuage and of the chambers, stables, rooms and other the buildings aforesaid, to the same messuage belonging, to the value of 50*l.* became rotten, spoiled and decayed, and by reason thereof the messuage aforesaid is daily in danger of falling, and was greatly hurt and detrimented: And the said J. E. T. H. and M. F. during the term aforesaid and after the death of the said T. H. to wit, the same day and year last mentioned, suffered the dove-house belonging to the said messuage, and parcel of the premises above as aforesaid demised, of the price of 5*l.* to be and stand unrepaired for want of walling, daubing and plaistering thereof; they suffered likewise the great barn, malt-house and hay-house, other parcel of the premises as aforesaid demised, of the price of 20*l.* to be

Lessor gives
the premises
tot w
lives.

One of the
devisees dies.

[134]
Breach assigne

and stand uncovered and in decay for want of walling, daubing, plaistering, boarding, joisting, groundselling, tiling, thatching and leading, whereby those premisses were daily in danger of rotting and falling: they suffered likewise the garden door and 20 perch of the posts, pails and rails of the garden aforesaid, parcel of the said premisses, to be decayed, rotten, broke, thrown down, taken, carried away and spoiled for want of repairing thereof: And the said *J. E. T. H.* and *M. F.* did not repair or amend the tenements aforesaid during the term and before the end of the same, but the said tenements so being in decay and unrepaired as aforesaid, at the end of the term aforesaid, without repairs or amendment thereof left, against the form and effect of the covenant aforesaid in the said indenture as aforesaid mentioned: And so the said *A. L.* says, that the said *J. E. T. H.* and *F. M.* the said covenant of the said *T. H.* to the said *A. L.* altho' often required, &c. have not performed, but have unjustly broke, and have hitherto altogether denied, and yet do deny, to perform it to the same *A. L.* whereby the same *A. L.* says that she is prejudiced, and hath damage to the value of 160*l.* And therefore she produces the suit, &c.

Morgan and Read.

Covenant against the executrix of an executor because there was an equitable right.

City of *Bristol*, to wit. *John Morgan* complains of *Samuel Read* the younger, executor of the last will and testament of *Sarah Brathron*, widow, who was executrix of the last will and testament of *Roger Brathron* deceased, otherwise lately called, &c. in the custody of the marshal, &c. in a plea of breach of covenant for this, to wit, that whereas *Richard Taylor* of *Leggs Grange* in the county of *Monmouth*, gent. and the said *John Morgan*, purchased to them and their heirs of and from the said *Roger Brathron* several messuages, lands, tenements and hereditaments situate, lying and being in *Cardiffe* and *Whitchurch* in the county of *Glamorgan*; And whereas afterwards by a certain writing made at the city of *Bristol* aforesaid in the county of the said city on the 30th day of *July* in the year of the Lord 1678, reciting the purchase aforesaid; and farther reciting, that whereas one *Henry Tracey*, esq; claimed and pretended to have a certain annuity of 20*l.* a year issuing and payable to him by the grant of *Edward Thomas*, esq; out of the said premisses, (among other lands of the said *Edward Thomas*) and that he the said *Roger Brathron* on the sale thereof had agreed with the said *Richard Taylor* and *John Morgan* at the time of their purchase to indemnify them the said *Richard Taylor* and *John Morgan* from and against the said annuity, he the said *Roger Brathron*, in performance of the agreement aforesaid, by the same writing for himself, his heirs, executors and assigns, did covenant and grant to and with the said *Richard Taylor* and *John Morgan*, their heirs, executors and assigns, that he the said

Roger

Covenant to save harmless.

[135]

Death of the joint purchaser.

Death of the vendor, whose executrix proved his will and died, having first made her will, and the defendant executor.

Breach, that a bill in chancery was filed against him, and defendant had not indemnified him.

Roger Brathron, his heirs, executors and administrators, from time to time, and at all times from thenceforth for ever, would well and sufficiently save harmless and keep indemnified the said *Richard Taylor* and *John Morgan*, their heirs, executors and administrators, and their respective tenants, and the several messuages, lands, tenements and hereditaments by them purchased as aforesaid of the said *Roger Brathron* of and from the said annuity, and also of and from all actions and suits in law and equity, costs, charges, losses, expences and damages whatsoever which should be prosecuted or happen against or to them, or either of them, by the said *Henry Tracey*, or any claiming under him, for or in respect of the annuity aforesaid, or in any wise relating thereto, as by the same writing here in court produced sealed with the seal of the said *Roger Brathron*, bearing date the day and year last aforesaid, more fully appears: And whereas afterwards, to wit, on the 10th day of *January* in the 31st year of the reign of the said lord the now king, at the city of *Bristol* aforesaid in the county of the same city, the said *Richard Taylor* died, and the said *John Morgan* survived him: And whereas also afterwards, to wit, on the said 10th day of *January* in the 31st year of the reign of the said lord the now king aforesaid, the said *Roger Brathron*, at the city of *Bristol* aforesaid in the county of the same city, made his last will and testament in writing, and by the same then and there constituted and ordained the said *Sarah* his wife executrix of the said will, and afterwards there died; and the said *Sarah* afterwards there proved the said will in due form of law; and afterwards, to wit, the 10th day of *February* in the 32d year of the reign of the said lord the now king, at the city of *Bristol* aforesaid in the county of the same city, made her last will and testament in writing, and by the same then and there constituted and ordained the said *S. R.* executor of her said will, and afterwards, to wit, on the same 10th day of *February* in the year last aforesaid, at the city of *Bristol* aforesaid in the county of the same city, died: And the said *John* in fact says, that at the time of the purchase of the lands aforesaid the said lands were and yet are chargeable with the said annuity during the life of the said *Henry Tracey* in equity; and that the said *H. T.* after the death of the said *Sarah*, and before the exhibition of this bill, to wit, on the 1st day of *November* in the 33d year of the reign of the said lord the now king, at the city of *Bristol* in the county of the same city, prosecuted a certain suit in the court of chancery of the said lord the king against him the said *John* for the recovery of the annuity aforesaid and the arrears of the same, of which said suit he the said *S. R.* afterwards, to wit, on the 10th day of *January* in the 33d year, &c. at the city of *Bristol* in the county of the same city (pending the suit aforesaid) had notice, and then and there was required to take upon himself the defence of the suit aforesaid, and to supply the expences thereof, which the said *S.* then and there refused to do, and so the same *John* says that the said *S.* although often required, hath not saved harmless

and kept indemnified the said *John* and his tenants of and from the suit aforesaid, by the said *H. Tracey* so as aforesaid against him commenced and prosecuted for and concerning the annuity aforesaid, and the covenant of the said *Roger* to the said *John* hath not performed, but broke, and hath hitherto denied, and yet doth deny to perform it to him, whereby the same *John* says that he is prejudiced, and hath damage to the value of 500*l*. And therefore he produces the suit, &c.

Covenant by the
assignee of the
reversion.

The lease

produced in
court.

Demise.

[136]

London, to wit. *H*enry Ashurst and Benjamin Strange complain of *Roger Mingar* and *William Ferrand*, being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, in a plea of breach of covenant, for this, to wit, that whereas one *Thomas Glover* of *London*, merchant, was seised of a messuage with the appurtenances, situate in *Gracechurch-street*, *London*, in his demean as of fee, and so being thereof seised the same *Thomas Glover* on the 1st day of *February* in the 22d year of the reign of the lord *Charles* the second, now king of *England*, &c. by his certain indenture then made at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, between the said *Thomas Glover*, by the name of *Thomas Glover* of *London*, merchant, of the one part, and the said *Roger Mingar* and *William Ferrand*, by the names of *Roger Mingar* and *William Ferrand* citizens and drapers of *London*, of the other part, which other part, sealed with the seals of the said *Roger Mingar* and *William Ferrand*, the same *Henry Ashurst* and *Benjamin Strange* produce here in court, the date whereof is the day and year abovesaid, the said *Thomas Glover* as well for and in consideration of the sum of 220*l*. of lawful money of *England*, to the same *Thomas* by the said *Roger Mingar* and *William Ferrand*, or one of them, well and truly paid, as for and in consideration of the rent, covenants and agreements after in the said indenture reserved, on the part of the said *Roger Mingar* and *William Ferrand*, their executors, administrators and assigns, to be paid, done and performed, did demise, grant and to farm let to the said *Roger Mingar* and *William Ferrand*, the said messuage or tenement with the appurtenances, by the name of all that messuage or tenement with the appurtenances, situate, lying and being in *Gracechurch-street* aforesaid, on the west side of the said street in the parish of *St. Leonard East-cheape*, next adjoining to a messuage or tenement in the occupation of *David Urry*, ironmonger, on the north side, and the house of one *Henry Aynscombe* on the south side, as the said messuage was then lately rebuilt by the said *Thomas Glover*, and called or known by the name or sign of the *Rose and Crown*, paved in the yard thereto belonging with freestone, together with all solars, cellars, chambers, rooms, shops, lights, easements, ways, water-courses, commodities and appurtenances whatsoever to the said messuage or tenement belonging or appertaining, and particularly a water-course which then ran thro' the yard of the said *Henry Aynscombe*;

Aynescombe; To have and to hold the said messuage or tenement, with all and singular the before demised premises with the appurtenances, to the said *Roger Mingar* and *William Ferrand*, their executors, administrators and assigns, from the feast-day of the nativity of our Lord God then last past before the date of the said indenture unto the end and term of 31 years from thence next ensuing and fully to be compleat and ended; Yielding and paying therefore yearly and every year, during the said term to the said *Thomas Glover*, his heirs and assigns, the yearly rent of 70*l.* of lawful money of *England*, at the four most usual feasts or terms of the year, that is to say, at the feasts of the annunciation of the blessed virgin *Mary*, the nativity of *St. John* the baptist, *St. Michael* the archangel, and the birth of our Lord God, by even and equal portions: And the said *Roger Mingar* and *William Ferrand*, for themselves and each of them, their executors, administrators and assigns, did covenant, promise, grant and agree to and with the said *Thomas Glover* his heirs and assigns, by the said indenture in manner and form following, that is to say, that they the said *Roger Mingar* and *William Ferrand*, their executors, administrators and assigns, or some or one of them, would well and truly pay or cause to be paid to the said *Thomas Glover*, his heirs and assigns, the said yearly rent of 70*l.* quarterly by equal portions, according to the reservation aforesaid in that behalf, as by the indenture aforesaid among other things is more fully manifest and appears: By virtue of which said demise the said *Roger Mingar* and *William Ferrand* into the messuage aforesaid with the appurtenances entered, and were thereof possessed for the term aforesaid above demised; and being so thereof possessed (the reversion thereof to the said *Thomas Glover* and his heirs belonging) the said *Thomas Glover* afterwards, to wit, on the 21st day of *March* in the 29th year of the reign of the said lord the now king, at *London* aforesaid in the parish and ward aforesaid, by a certain indenture of bargain and sale then and there made between the said *Thomas Glover* on the one part, and the said *Henry Ashurst* and *Benjamin Strange*, and one *Giles Rawlins* now deceased, of the other part, one part whereof, sealed with the seal of the said *Thomas Glover*, the same *Henry* and *Benjamin* produce here in court, the date whereof is the day and year last mentioned, for and in consideration of 5*s.* of lawful money of *England*, by them the said *Henry Ashurst*, *Benjamin Strange* and *Giles Rawlins*, then and there in hand paid, bargained and sold to the said *Henry Ashurst*, *Benjamin Strange* and *Giles Rawlins*, (among other things) the reversion of the said messuage with the appurtenances; To have and to hold to them and their assigns from the day next before the date of the said indenture for one year then next following: By virtue of which said bargain and sale, and by force of the statute for transferring uses into possession made and provided, the said *Henry Ashurst*, *Benjamin Strange* and *Giles Rawlins*, were possessed of the reversion of the messuage aforesaid with the appurtenances for the term of one year aforesaid;

Habenda.

Reddenda.

Covenant to pay the rent.

Entry of the lessee.

Bargain and sale of the reversion.

Statute of uses.
27 H. 8. c. 10.

Release of the
reversion.

Seign of the re-
version.

Survivorship.

[137]

Breach.

aforesaid; and so being thereof possessed the said *Thomas Glover* afterwards, to wit, on the 22d day of *March* in the 29th year abovesaid, at *London* aforesaid in the parish and ward aforesaid, by a certain indenture tripartite then and there made between the said *Thomas Glover* and *Rebecca* his wife of the first part, *Maximillian Bard*, *William Bard* and *Rebecca* his wife, of the second part, and the said *Henry Ashurst*, *Benjamin Strange* and *Giles Rawlins*, of the third part, one part of which said indenture, sealed with the seal of the said *Thomas Glover*, the same *Henry Ashurst* and *Benjamin Strange* produce here in court, the date whereof is the day and year last mentioned, for and in consideration of the sum of 3000 *l.* of lawful money of *England* to the said *Thomas* in hand paid, did release (among other things) the reversion of the messuage aforesaid with the appurtenances to the said *Henry Ashurst*, *Benjamin Strange* and *Giles Rawlins*, then being in possession of the reversion of the messuage aforesaid with the appurtenances as is aforesaid; To have and to hold the reversion of the messuage aforesaid with the appurtenances of the said *Henry Ashurst*, *Benjamin Strange* and *Giles Rawlins*, their heirs and assigns, to the only use and behoof of the said *Henry Ashurst*, *Benjamin Strange* and *Giles Rawlins*, their heirs and assigns for ever, as by the indenture tripartite aforesaid among other things is more fully manifest and appears: By virtue of which said release the said *Henry Ashurst*, *Benjamin Strange* and *Giles Rawlins*, of the reversion of the messuage aforesaid with the appurtenances were seised in their demean as of fee; and afterwards, to wit, on the 10th day of *May* in the 30th year of the reign of the said lord the now king, the said *Giles Rawlins* at *London* aforesaid in the parish and ward aforesaid died, and the said *Henry Ashurst* and *Benjamin Strange* him the said *Giles* survived, and were seised of the reversion aforesaid in their demean as of fee by right of survivorship, &c. And the same *Henry* and *Benjamin* in fact say, that although the said *Thomas Glover* from the time of the making of the indenture of demise aforesaid until the said 21st day of *March* in the 29th year abovesaid, and the said *Henry* and *Benjamin* from the said 21st day of *March* in the 29th year abovesaid, hitherto have well and faithfully observed and performed all and singular the covenants and grants in the indenture of demise aforesaid contained, on the part of the said *Thomas Glover* and his assigns to be performed and fulfilled; protesting also, that the said *Roger Mingar* and *William Ferrand* have not performed or fulfilled any of the covenants or grants in the same indenture contained, on the part of the said *Roger Mingar* and *William Ferrand*, or their assigns, to be performed and fulfilled, in fact the same *Henry* and *Benjamin* say, that 175 *l.* of the said yearly rent of 70 *l.* as aforesaid, reserved for two whole years and half a year ended in and upon the feast-day of *St. Michael* the archangel in the 31st year of the reign of the said lord the now king, were and yet are in arrear and unpaid to the said *Henry Ashurst* and *Benjamin Strange*; which said 175 *l.* the said *Roger*

Roger Mingar and *William Ferrand* have not, nor hath either of them yet paid to the same *Henry* and *Benjamin*, or either of them, according to the form and effect of the indenture aforesaid: And so the said *Henry* and *Benjamin* say, that the said *Roger Mingar* and *William Ferrand*, altho' often required, the covenant between the said *Thomas Glover* and them the said *Roger Mingar* and *William Ferrand* in that behalf as aforesaid made have not, nor hath either of them, performed to the same *Henry* and *Benjamin*, but have hitherto altogether denied, and yet do deny to perform it to them, to the damage of the said *Henry* and *Benjamin* 300 l. And therefore they produce the suit, &c.

And now on this day, to wit, *Wednesday* next after the octave of *St. Hillary* in this same term, until which day the said *Roger* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster*, come as well the said *Henry* and *Benjamin* by their attorney aforesaid, as the said *Roger* by *John Lilly* his attorney: And the said *William Ferrand*, altho' solemnly called, comes not, nor says any thing in bar or preclusion of the action of the said *Henry* and *Benjamin*, whereby the same *Henry* and *Benjamin* remain against the said *William* therein undefended, &c. wherefore the same *Henry* and *Benjamin* ought to recover their damages by reason of the premisses against the said *William*; but because it is convenient that there should be but one taxation of damages in this behalf, Therefore let the taxation of damages against the said *William* stay until the plea between the said *Henry* and *Benjamin* and the said *Robert* is determined: And the same *Roger* says, that the said *Henry* and *Benjamin* ought not to have or maintain their action aforesaid thereof against him, because he says, that well and true it is that the said *Thomas Glover* was seised of the messuage aforesaid with the appurtenances in his demesne as of fee; and being so thereof seised demised the messuage aforesaid with the appurtenances to the said *Roger Mingar* and *William Ferrand* for the term aforesaid, and that they the said *Roger* and *William* by virtue thereof were jointly possessed in manner and form as the said *Henry* and *Benjamin* above have declared; but the said *Roger* farther says, that long before the feast of *St. Michael* the archangel in the 31st year above said, they the said *Roger* and *William Ferrand* so being jointly possessed, and the said *Thomas Glover* so being seised of the reversion aforesaid, the said *Roger*, with the assent and consent of the said *Thomas Glover*, on the 20th day of *February* in the 24th year of the reign of the said lord the now king, at *London* aforesaid in the parish and ward aforesaid, by his certain indenture then and there made between him the said *Roger*, by the name of *Roger Mingar*, citizen and *London*, of the one part, and the said *William Ferrand*, by the name of *William Ferrand*, citizen also and *London*, of the other part, one part whereof sealed with the seal of the said *William Ferrand* the same *Roger* produces here in court, the date whereof is the same day and year last above said, reciting, that whereas *Thomas Glover*

Impar'ants.

One defendant makes default.

One taxation of damages.

Confession of the seisin and demise.

One of the lessors with the consent of the lessor releases his moiety to the others,

Glover of *London*, merchant, by indenture of demise under his hand and seal, bearing date the first day of *February* in the 22^d year of the reign of the said lord the now king, for the consideration in the said indenture mentioned, had demised, granted and to farm let to the said *Roger Mingar* and *William Ferrand* all that messuage or tenement with the appurtenances, situate, lying and being in *Grace-church street*, on the west side of the said street in the parish of *St. Leonard Eastcheape* next adjoining to a messuage or tenement in the occupation of *David Urry, &c.* To have and to hold the said messuage or tenement, and all and singular other the before demised premises, with the appurtenances, to the said *Roger Mingar* and *William Ferrand*, their executors, administrators and assigns, from the feast-day of the nativity of our Lord then last past, before the date of the said recited indenture of demise, unto the full end and term of 31 years from thence next ensuing and fully to be compleat and ended; and also reciting, that the said *Roger Mingar* and *William Ferrand* had been for sundry years then last past partners and joint traders in the trade of a woollen draper in buying and selling cloth and other goods and commodities, which said copartnership, by the mutual consent of them the said *Roger Mingar* and *William Ferrand*, was determined and broke off; and reciting farther, that whereas it was agreed by the mutual consent of the said parties, that at the end or dissolution of the said copartnership the said *William Ferrand* should have the said messuage and the whole term then to come and unexpired demised; he the said *Roger*, for and in consideration of the sum of 183*l.* of lawful money of *England* to him in hand paid by the said *William Ferrand* at and before the sealing and delivery of the said indenture, and also in pursuance of the said agreement, did grant, bargain, sell, release and assign by the said indenture to the said *William Ferrand* a moiety of the messuage or tenement aforesaid in the declaration aforesaid mentioned, and of all and singular other the premises with the appurtenances by the said indenture of demise leased, and also the right, title, interest, term of years then remaining and to come, property, claim and demand whatsoever of him the said *Roger* in the same, by reason whereof he the said *William* was sole seised of and in the messuage aforesaid with the appurtenances for and during the term aforesaid; and thereupon he the said *Thomas Glover* then and there demised to the said *Roger* a certain other messuage, situate and lying in *London* aforesaid in the parish aforesaid, for the term of twenty-one years then next ensuing, under the yearly rent of 70*l.* yearly to be paid during that term, and then and there accepted him the said *William Ferrand* for his sole tenant of the messuage aforesaid above in the declaration mentioned: And afterwards, to wit, on the 12th day of *May* in the 24th year of the reign of the said lord the now king, at *London* aforesaid in the parish and ward aforesaid, received of him the said *William Ferrand* the sum of 17*l.* and 10*s.* for the rent of the said messuage for one quarter of a year

[138]

whereby he became sole possessed;

whom the lessor accepted for his sole tenant, and received the rent of him.

year ended at the feast of the annunciation of the blessed virgin Mary then last past : And this the same Roger is ready to verify : Wherefore he prays judgment if the said Henry and Benjamin ought to have or maintain their action aforesaid thereof against him, &c.

Note ; *There was a demurrer to this plea, which was argued several times, but it was agreed before judgment ; the court inclined that the action was well brought on the covenant, and that the plea on the matter was ill.*

Hertford, to wit. *Andrew Hackett* late of the town of Hertford in the county aforesaid, esq; was summoned to answer to *Josiah Glover* in a plea, that he perform to him the covenant between them made according to the force, form and effect of a certain writing by the same Andrew to the same *Josiah* thereof made, &c. And whereon the same *Josiah* by *William Allington* his attorney says, that the said Andrew on the 27th day of November in the year of the Lord 1708, at the town of Hertford aforesaid, by his certain writing sealed with his seal and here in court produced, bearing date the same day and year, for and in consideration of the sum of 48 l. 10 s. of lawful money of this kingdom to him in hand paid by the said *Josiah*, did bargain and sell, and deliver to the said *Josiah*, the goods and things in the schedule to the same writing subscribed ; To have and to hold to the said *Josiah*, his executors, administrators and assigns, to the only use and behoof of the said *Josiah*, his executors administrators and assigns for ever ; and he the said Andrew by the said writing covenanted with the same *Josiah*, that he the said bargained premises to the said *Josiah*, his executors, administrators and assigns, against all persons would warrant and for ever defend by the said writing, as by the said writing with the schedule aforesaid annexed more fully is manifest and appears : And the same *Josiah* in fact says, that the premises aforesaid so sold, and in the schedule aforesaid mentioned, are certain goods and chattels in the brew-house, malt-house and out-houses then late of *John Wallis*, situate in the said town of Hertford, and were and are a certain kilnwire and all iron backs of chimnies in the said house, and all hasps, iron posts and keys in the said house, all leaden pipes and brass locks thereto belonging ; the little stove in the kitchen, an iron oven lid, all the shelves and dressers, all the ladders used about the house, the pump and dial, two coppers in the brew-house, one brass candlestick, one mashfat, an under back, a table-leaf, a trough, a pair of still-yards, a pair of tongs, a fire-shovel, two pair of doggs, two pot-hangers, two brass kettles, one table, two joint-stools, a jack, two coolers, two under-tuns, fourteen tubs, a jett, a funnel, a leaden pipe and a brass cock : And the same *Josiah* in fact says, that the said Andrew at the time of the making the said writing had no interest, possession or property of or in the said goods and chattels, or any part

Covenant on a bill of sale of goods.

Warranty.

Branch :

[139]

Demurrer to the
declaration.The causes.
27 El. c. 5.
4 Anne, c. 16.

Joinder.

Covenant against
an executor on a
covenant of the
testator to re-
ceive *South Sea*
Stock, &c.

part thereof, but the true property thereof then was in one *John Hall*, and so the said *Andrew*, although often required, his covenant aforesaid with the said *Josiah* above in this behalf made hath not performed to him, but broke and hath altogether denied and yet doth deny to perform it to him, to the damage of the said *Josiah*, 50*l*. And therefore he produces the suit, &c.

And the said *Andrew* by *C. N.* his attorney comes and defends the force and injury, &c, and says that the said declaration aforesaid, and the matter in the same contained, are not sufficient in law for the said *Josiah* to maintain his action aforesaid against him the said *Andrew* had; and that he to that declaration hath no necessity, nor is by the law of the land obliged to answer: And this he is ready to verify: Wherefore for want of a sufficient declaration in this behalf the said *Andrew* prays judgment, and that the said *Josiah* may be precluded from his action aforesaid had, &c. And for causes of demurrer in law upon that declaration, the same *Andrew* according to the form of the statute in such case made and provided, doth set down and to the court here expresses these causes following to wit, Because by the declaration aforesaid no place or county is alledged, from the neighbourhood whereof or from whence a jury should come, to try what the goods or any of them in the said schedule contained were, or whether the property of the goods and chattels in the same declaration specified at the time of the making the writing aforesaid, in the said declaration mentioned, was to the said *Andrew* or to the said *John Hall*: And because it don't appear by what name the said *Andrew* is called, or what addition he has in the writing aforesaid, as it ought, so that it might manifestly appear that he is the same who is named in the said writing, and that because the declaration aforesaid is in itself insensible and contradictory; alledging first that at the time of the making of the said writing the same *Andrew* by the writing aforesaid sold and delivered the said goods and chattels in the same declaration mentioned, and afterwards that the said *Andrew* at the same time of the making of the same writing had no possession or property of or in the same goods and chattels; and also because it is not alledged expressly and affirmatively that there was any schedule to the same writing annexed, whereon any issue can be taken or joined, and because the same declaration is altogether uncertain, and wants form, &c.

And the said *Josiah*, for that he hath above alledged sufficient matter in law to maintain his declaration aforesaid, which he is ready to verify, which said matter the same *Andrew* doth not deny, nor any way answer thereto, but doth wholly refuse to admit that averment, prays judgment, and his damages by reason of the breach of covenant to be adjudged to him, &c.

London, to wit. *E* *Dward B.* and *Samuel K.* gent. complain of *Thomas V.* executor of the last will and testament of *John H.* deceased, otherwise lately called *John H.* of the parish of *St. James* within the liberty of *Westminster* in the county

The covenant
set forth.

[140]

county of *Middlesex*, gent. in the custody of the marshal, &c. in a plea of a breach of covenant, for this, to wit, that whereas the said *John H.* in his life-time, to wit, on the 21st day of *August*, in the year of the Lord 1720, at *London* aforesaid, in the parish of *St. Mary-le-Bow*, in the ward of *Cheap*, by his certain writing, sealed with the seal of the said *John H.* in his life-time and here in court produced, bearing date the same day and year, for himself, his heirs, executors and administrators, did covenant, promise and agree to and with the said *Edward B.* by the name of *Edward Borgan*, citizen and *Barber Surgeon* of *London*, and the said *S. K.* by the name of *S. K.* of the parish of *St. Dunstan, London*, gent. their executors, administrators or assigns, jointly and severally, that before or on the first day that the transfer books of the governor and company of merchants of *Great Britain* trading to the *South Seas* and other parts of *America*, and for the promoting of the fishery, &c. should be open for publickly transferring shares, credit or interest, in the capital stock of the said company, after the birth of our Lord then next ensuing, he the said *John H.* his executors, administrators or assigns, would accept and receive, or cause to be accepted and received of and from the same *E. B.* and *S. K.* their executors, administrators or assigns, 200*l.* share, credit or interest in the said capital stock of the governor and company aforesaid, to be transferred by the said *E. B.* and *S. K.* their executors, administrators or assigns, or any of them, with all dividends, profits and emoluments, due and payable for the same at and to *Midsummer* then last past, and which then after were or should be voted, ordered and become payable for the same, until the birth of our Lord then next ensuing : And that before or at the time of the transfer thereof, or upon the same first day that the transfer-books of the said company should be open after the birth of our Lord then next ensuing, or upon such day as they by the said *John H.* his executors, administrators or assigns, by notice in writing given or left for the same *Edward B.* and *S. K.* their executors, administrators or assigns or any of them, at *London* aforesaid, at the mansion-house of the said *Edward B.* in *Cannon-Street, London*, should be required sooner to transfer, he the said *John H.* his executors, administrators or assigns, would well and truly pay, or cause to be paid for the same, to the said *Edward B.* and *S. K.* their executors, administrators or assigns, the sum of 2100*l.* of lawful money of *Great Britain*, being after the rate of 1050*l.* for every 100*l.* stock, together with all monies which in the mean time should be called in by the said company or otherwise by the said *Edward B.* and *S. K.* their executors, administrators or assigns, or any of them paid by reason thereof, and interest for such monies from the time of the payment thereof, as by the writing aforesaid, among other things, more fully appears : And the same *Edward* and *S.* in fact say, that after the 31st day of *August* in the year of the Lord 1720 aforesaid, to wit, on the 19th day of *September* in the year of the Lord 1720 at *London* aforesaid in the parish and ward aforesaid, the said *John H.* in his

The testator died, and the defendant proved his will.

The plaintiffs attend to transfer.

But none came on the part of the defendant to receive it.

Breach.

No notice given the Plaintiffs.

life-time made his last will and testament in writing, bearing date the same day and year last above said, and thereby constituted and appointed the said *Thomas Vincent* executor thereof; and afterwards, to wit, the 20th day of the same month of *September* in the year of the Lord last above said, at *London* afore said in the parish and ward afore said died; after whose death, to wit, the same day and year last above said, at *London* afore said in the parish and ward afore said, he the said *Thomas* in due form of law proved the last will and testament afore said, and took upon him the burden of the execution thereof: And that the 1st day *May* in the year of the Lord 1721 was the first day that the transfer-books of the governor and company afore said were open for publickly transferring shares, credit or interest in the capital stock of the said company, after the birth of our Lord next ensuing the date of the writing afore said: And the same *E. and S.* farther say, that they the same *E. and S.* on the same 1st day of *May* in the year last above said, were from nine of the clock in the morning until, to, and after one of the clock in the afternoon of the same day at the *South-sea House*, situated in *Broad-street*, in the city of *London* afore said, and offered to transfer to the said *T. V.* executor of the said *J. H.* the said 200*l.* share, credit or interest in the said capital stock, together with 20*l.* credit capital stock, that being the profit, dividend and emolument, due and payable for the said 200*l.* share, credit or interest in the same capital stock, at and to *Midsummer* then last past, and on the same 1st day of *May* in the year last above said, were ready and offered to pay to the same *T. V.* executor of the said *J. H.* as afore said, the sum of 11*l.* of lawful money of *Great Britain*, being the whole dividend, profit and emolument, due and payable for the said 220*l.* credit in the capital stock afore said, until the birth of our Lord next ensuing the date of the writing afore said, according to the form and effect of that writing: And that the said *T. V.* or any other on the behalf of the said *T. V.* did not come, nor was there to accept or receive, or cause to be accepted or received, of and from the said *Edward and S.* the said 220*l.* credit in the stock afore said, and the said sum of 11*l.* nor paid to the same *E. and S.* the said sum of 2100*l.* nor any part thereof at any time hitherto, as he ought to have paid; but the said *T. V.* then and there wholly refused and yet doth refuse to accept it, or to pay the said 2100*l.* to the same *E. and S.* for it: And that he the said *J. H.* in his life-time, or the said *T. V.* as his executor after the death of the said *J. H.* or either of them, or any other person for them, or either of them, at any time after the said 31st day of *August* in the of the Lord 1720 above said, and before the said first day of *May* in the year of the Lord 1721, did not give or leave any notice in writing for the said *E. and S.* at the said mansion-house of the said *E. B.* situate in *Cannon-street London* afore said, to transfer the said 200*l.* credit or stock in the company afore said: And farther the same *E. and S.* in fact say, that the *South-sea House* in *Broad-street* afore said, on the said 1st day of *May* in the year of the Lord 1721 above said, and long before

before, was and yet is the place of transferring the stock aforesaid; and that the transfer-books of the said company are, and for all the time aforesaid were, kept in the same house; and that the hours between nine of the clock in the morning and one of the clock in the afternoon are, and on the said first day of *May* in the year of the Lord 1721 aforesaid, and long before and continually afterwards hitherto, were the accustomed and usual hours for transferring the said stock, and no other; so the same *E.* and *S.* say that the said *J. H.* in his life-time, and the said *T. V.* after the death of the said *J.* as his executor, have not performed, but broke the covenant aforesaid, and the said *J. H.* in his life-time, and the said *T.* after his death, have altogether refused, and the said *T.* doth yet refuse to perform it to the same *E.* and *S.* to the damage of the said *E.* and *S.* 2300 *l.* And therefore they produce the suit, &c.

[141]

London, to wit. *Anthony Townsend*, esq. complains of *Thomas Lawrence* being in the custody of the marshal of the *Marshalsey* of the lord and lady the king and queen before the king and queen themselves, in a plea of breach of covenant, for this, to wit, that whereas by a certain indenture made at *London*, to wit, at the parish of *St. Andrew, Holborn*, in the ward of *Farringdon Without*, on the 20th day of *January* in the year of the Lord 1686, between him the said *Anthony Townsend*, by the name of *Anthony Townsend* of the city of *Coventry*, esq; of the one part, and the said *Thomas*, by the name of *Thomas Lawrence* of the said city of *Coventry*, ironmonger, of the other part, the other part of which said indenture, sealed with the seal of the said *Thomas*, the same *Anthony* produces here in court, the date whereof is the same day and year, he the said *Anthony Townsend*, for and in consideration of the rents and covenants in the said indenture after reserved and mentioned on the lessee's part to be paid and performed, had demised, granted and to farm let, and by the said indenture did demise, grant and to farm let, to the said *Thomas Lawrence* all that close or parcel of land with the appurtenances, commonly called or known by the several names of the *Oat-close* and the *Smock-shirte*, containing by estimation twenty-three acres or thereabouts, being part of a great meadow at or near *Coventry* (the common highway leading from *Coventry* to *Stitchall* lying on the west side thereof, another part of the said meadow in the occupation of *Francis Hanson*, esq; on the east side thereof, another part of the said meadow in the occupation of *John Snell* on the south side thereof, and another part of the said meadow called the *Islands* in the occupation of the said *John Snell* on the north side thereof,) and also a drift and bridle-way, and a way for carts, wains, and carriages through a gate called *Childsmore-gate*, and so by the said part of the said meadow in the occupation of the said *Francis Hanson*, esq; at all times, together with all hedges, gates, ditches, fences, mounds, ways, waters, passages, easements and commodities whatsoever to the said demised premises belonging or with the same used or enjoyed, (except

Covenant for
rent arrear.
Pract. Reg. 345,
355.

The demise.

Exceptions.

(except and alway reserved to *Edward Rogers* of the the said city, taylor, and all others who then after should become occupiers of that part of the said meadow then in the occupation of the said *Edward Rogers*, a bridle and drift-way to the same through the premises by the said indenture above demised, and also a bridle and drift-way to and for the said *John Snell*, and all others who then after should become occupiers of that part of the said meadow then in the occupation of the said *John Snell*, at all times, and a way for carts, carriages and wains, through the same at all times (except such time as there should be mowing grafs or standing corn upon the same) also except and alway reserved to the said *Anthony Townsend*, his executors, administrators, and assigns, free passage in, by and through all foot-ways, as also for coaches, carts, horses, and wains in, by and through all highways then left or used in the said pieces of land by the said indenture demised, except also to the said *Anthony Townsend* all game and liberty to hawk, hunt, fish and course in any part of the premises at usual and proper times, and also except to the said *Anthony Townsend* all trees and the lops, tops and shreds of trees, with liberty to cut, fell, cart, or otherwise carry away the same) to have and to hold the said demised closes or parcels of land with their and every of their appurtenances (except as before excepted) to the said *Thomas Lawrence*, his executors, administrators and assigns, from the feast-day of the annunciation of the blessed virgin *Mary* then next ensuing the date of the said indenture, for and during and unto the full end and term of 21 years from thence next coming and following fully to be complete and ended; Yielding and paying therefore yearly and every year during the said term of 21 years to the said *Anthony Townsend*, his executors, administrators, and assigns, the yearly rent or sum of 20*l.* of lawful money of *England*, at the two usual feasts or terms in the year, that is to say, the feast of *St. Michael* the arch-angel and the annunciation of the blessed virgin *Mary*, by even and equal portions: --- And the said *Thomas Lawrence*, for himself, his executors, administrators and assigns, did covenant, promise and grant to and with the said *Anthony Townsend*, his executors, administrators and assigns, by the said indenture in manner and form following, that is to say, that he the said *Thomas Lawrence*, his executors, administrators and assigns, yearly and every year during the said term, would well and truly pay or cause to be paid to the said *Anthony Townsend*, his executors, administrators and assigns, the said yearly rent of 20*l.* in manner and form aforesaid, and at the days and times above limited for the payment thereof, as by the same indenture among other things is more fully manifest and appears: By virtue of which said demise the said *Thomas*, on the morrow of the said feast of the annunciation of the blessed virgin *Mary* next after the date of the indenture aforesaid, into the premises aforesaid with the appurtenances to him as aforesaid above demised entered, and was and yet is thereof possessed: And the same *Anthony* in fact says, that although he hath well and faithfully, according to the form and effect of the said indentur;

Habendum.

Reddendum.

Covenant to pay the rent.

[142]

The entry of the defendant.

indenture, performed and kept all and singu'ar the covenants and agreements in the indenture aforesaid above specified on the part of the said *Anthony* to be observed, performed or kept, the said *Thomas* hath not paid or caused to be paid to the said *Anthony* the sum of 10*l.* to the same *Anthony* by the said *Thomas* due of the rent aforesaid for the said demised premises for half a year ended at the feast of the annunciation of the blessed virgin *Mary* 1689; and that the said *Thomas* hath not paid or caused to be paid to the same *Anthony* the like sum of 10*l.* to him by the said *Thomas* due of the rent aforesaid for the demised premises aforesaid for another half year ended at the feast of *St. Michael* the arch-angel 1689 aforesaid, which said several sums of money the said *Thomas* ought to have paid or caused to have been paid to the same *Anthony* at the same feast-days respectively, according to the form and effect of the indenture aforesaid; and so the same *Anthony Townsend* says, that the said *Thomas Lawrence*, although often required, &c. hath not performed his covenant aforesaid with the same *Anthony* in this respect as aforesaid made, but hath broke it, and hath hitherto altogether denied and yet doth deny to perform it to him; whereby the same *Anthony* says that he is prejudiced, and hath damage to the value of 40*l.* And therefore he produces the suit, &c.

Breach.

When, &c. And says that the said *Anthony* ought not to have or maintain his action aforesaid thereof against him, because he says, that the tenements aforesaid above supposed to be demised lie in the city of *Coventry* in the county of the city of *Coventry* aforesaid, and that long before the said *Anthony* had any thing in the tenements aforesaid, and before the demise aforesaid above supposed to be made, the mayor, bailiffs, and commonalty of the city of *Coventry* aforesaid were seised of the tenements aforesaid in their demean as of fee, until the said *Anthony* the said mayor, bailiffs and commonalty thereof unjustly and without judgment did disseise, whereby the same *Anthony* was seised of the tenements aforesaid in his demean as of fee by disseisin; and the same *Anthony* so thereof by that disseisin being seised demised the tenements aforesaid to the said *Thomas*; To have and to hold the tenements aforesaid to the same *Thomas* from the said feast-day of the annunciation of the blessed virgin *Mary* next ensuing the date of the indenture aforesaid, for and during and unto the full end and term of 21 years aforesaid from thence next following fully to be complete and ended; Yielding and paying therefore yearly and every year, during the said term of 21 years, to the same *Anthony Townsend* the said yearly rent or sum of 20*l.* at the said two usual feasts or terms in the year in the declaration aforesaid specified, by even and equal portions, as by the said declaration aforesaid is supposed: By virtue of which demise the same *Thomas* into the tenements aforesaid did enter, and was thereof possessed, as the said *Anthony* above against him hath declared, upon which the said *Thomas Lawrence's* possession thereof the said mayor, bailiffs, and commonalty of the city of *Coventry* aforesaid, before the said feast of the annunciation of the blessed

That the mayor, &c. of *Coventry* were seised in fee till disseised by the plaintiff who made the lease.

The defendant entered and the mayor, &c. re-entered and ousted him.

blessed virgin *Mary* 1689, into the same tenements re-entered, and him the said *Thomas* from his possession thereof did put out, and from thence hiterto have kept out and yet do keep out: And this he is ready to verify, &c. (*Q. Whether a corporation can enter unless by attorney.*)
Edward Northey.

Repl. that K. *James* the second was seised, &c. and demised to him for years, &c.

That he entered and demised to the defendant.

[143]

Traverse of the seisin of the corporation.

Issue on the traverse.

Suggestion that both the sheriffs and coroner are parties, wherefore the venire is awarded to elisors.

And the said *Anthony* says, that he by any thing by the said *Thomas* above in pleading alledged ought not to be precluded from his action aforesaid thereof against him had; because he says, that before the making of the demise aforesaid in the declaration aforesaid abovementioned, the lord *James* the second, late king of *England*, was seised of and in the tenements aforesaid by the indenture aforesaid so as aforesaid demised in his demean as of fee in the right of his dutchy of *Cornwall*; and so being thereof seised the same lord the late king *James* the second afterwards, and before the making of the indenture aforesaid, to wit, on the 17th day of *May* in the second year of his reign, by his letters patent sealed with the seal of his exchequer here in court produced, bearing date at *Westminster* the same day and year, demised to farm to the said *Anthony Townsend* the tenements aforesaid (among other things); To have and to hold the tenements aforesaid (among other things) to the said *Anthony* and his assigns from the feast of the annunciation of the blessed virgin *Mary* then last past for the term of 31 years from thence next ensuing fully to be compleat and ended: By virtue of which said letters patent the same *Anthony* into the tenements aforesaid entered, and was thereof possessed; and so being thereof possessed he the same *Anthony* on the said 20th day of *January* 1686 aforesaid in the declaration aforesaid mentioned, at *London* aforesaid in the parish and ward aforesaid, demised the tenements aforesaid to the said *Thomas* in the manner and form as the said *Anthony* above in his declaration hath declared; without that, that the said mayor, bailiffs and commonalty of the city of *Coventry* aforesaid were seised of the tenements aforesaid in their demean as of fee, in manner and form as the said *Thomas* above in pleading hath alledged: And this he is ready to verify: Wherefore he prays judgment, and his damages by reason of the breach of the covenant aforesaid, to be adjudged to him, &c.

J. Girdler.

And the said *Thomas* as before says, that the said mayor, bailiffs and commonalty of the city of *Coventry* aforesaid were seised of the tenements aforesaid in their demean as of fee, in manner and form as the said *Thomas* above by pleading hath alledged: And of this he puts himself on the country: And the said *Anthony* likewise, &c. And hereupon the said *Anthony* says, that *Samuel Collins* and *William Gibson*, now sheriffs of the city of *Coventry* and county of the same city, are bailiffs of the city of *Coventry* aforesaid, and therefore parties to the matter aforesaid above between him the said *Anthony* and the said *Thomas* put in issue; and

and that *Simon Burton*, now coroner of the city of *Coventry*, and county of the same city, is one of the said commonalty of the city of *Coventry* aforesaid, and therefore likewise a party to the said matter above between the said *Anthony* and the said *Thomas* as aforesaid put in issue: And the same *Anthony* prays a writ of the lord and lady the king and queen to be directed to two discreet and indifferent persons within the said county of the city of *Coventry* aforesaid residing, by the court here to be elected, to cause to come twelve free and lawful men of the neighbourhood of *Wicken* in the said county of the city of *Coventry* aforesaid, to try the issue aforesaid between the parties aforesaid above as aforesaid joined: And because the said *Thomas Lawrence* doth not deny the allegation aforesaid, therefore *E. H.* and *A. L.* (with the assent of the parties aforesaid by the court here elected and named) are commanded that they cause to come before the lord and lady the king and queen at *Westminster* on day next after twelve, &c. by whom, &c. and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Note; *This cause was ordered to be tried at the bar, but it was afterwards compromised.*

Declaration on a
bond enter'd into
to one who was
attainted of trea-
son, and his
goods granted by
the king to the
duke of York.
Præf. Reg.
397, 407.

London, to wit. **T**HE most illustrious prince the duke of York complains of *E. F.* gent. otherwise called, &c. in the custody of the marshal, &c. in a plea that he render to him 200 *l.* of lawful money of *England* which he owes to him and unjustly detains, for this, to wit, that whereas the said *E.* on the 26th day of *April* in the year of the Lord, &c. at *London*, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, by his certain writing obligatory sealed with the seal of the said *E.* and to the court of the said lord the now king here shewn, the date whereof is the day and year abovesaid, acknowledged himself to be held and firmly bound to one *T. W.* late of *M.* in the county of *R.* esq; in the said 200 *l.* to be paid to the same *T.* when he should be thereto required: And whereas also by a certain act in the parliament of the lord the now king, begun and held at *Westminster* in the county of *Middlesex* on the 25th day of *April* in the 12th year of his reign, and there continued until the 29th of *December* then next following, the said *T.* amongst others was duly and lawfully convicted and attainted of high treason, whereby the writing aforesaid, and the money by the same due, became forfeited to the same lord the now king; and afterwards, to wit, on the third day of *April* in the 13th year of the reign of the said lord the now king, the same lord the now king by his letters patent under his great seal of *England*, bearing date at *Westminster* the same day and year last mentioned, gave and granted to the said duke of York and his assigns for ever all the goods, debts and other chattels personal whatsoever of the said *T. W.* and others so attainted and convicted of high treason as aforesaid, wherein or of which he stood possessed in law or equity, whereby the said duke of York became interested and intitled in and to the writing aforesaid, among other things, and all the goods, debts and chattels of the said *T.* whereby an action accrued to the same duke to demand and have of the said *E.* the said 200 *l.* Nevertheless the said *E.* altho' often required, &c. hath not paid the said 200 *l.* to the said lord the king or to the said duke, but hath altogether refused to pay them the same, and doth yet refuse to pay the same to the said duke, to the damage of the said duke 40 *l.* And therefore he produces the suit, &c.

Suffex, to wit. **H**enry Crawley, executor of the last will and testament of *Nicholas Challoner* deceased,

Debt on bond
by the surviving
executor.

complains of *Thomas Holloway*, otherwise called *Thomas Holloway* of the parish of *Meeching*, otherwise *Newhaven* in the county of *Suffex*, butcher, in the custody of the marshal, &c. in a plea that he render to him 32 l. of lawful money of *England* which he unjustly detains from him, for this, to wit, that whereas the said *Thomas* on the 24th day of *December* in the 29th year of the reign of the lord *Charles* the second, now king of *England*, &c. at *Lewes* in the county aforesaid, by his certain writing obligatory sealed with the seal of the said *Thomas*, and to the court of the said lord the now king here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *Nicholas* in his life-time, in the said 32 l. to be paid to the said *Nicholas* in his life-time, his executors or administrators, when he should be thereunto required: Nevertheless the said *Thomas*, altho' often required, &c. hath not paid the said 32 l. to the same *Nicholas* in his life-time, nor to the said *Henry* after the death of the said *Nicholas*, nor to *Thomas Challoner* now deceased, executor with the said *Henry* of the will of the said *Nicholas*, or to any of them, which said *Thomas Challoner* the said *Henry* survived, but the same to the said *Nicholas* in his life-time, or to the said *Henry* and *Thomas*, or either of them, after the death of the said *Nicholas*, hath altogether denied to pay, and yet doth deny to pay the same to the said *Henry*, and unjustly detains, in delay of the faithful execution of the will of the said *Nicholas* aforesaid, and to the damage of the said *Henry* 20 l. And therefore he produces the suit, &c. And he the said *Henry* produces here in court the letters testamentary of the said *Nicholas*, whereby it sufficiently appears to the court of the said lord the now king here, that he the said *Henry* and the said *Thomas Challoner* now deceased, are the executors of the last will and testament of the said *Nicholas*, and have the administration thereof, &c.

[145]

Joseph and The Lord Mobun.

Mild, to wit. **B**enjamin Joseph, a debtor to the lady the now queen, comes before the barons of her ex-

Debt in the ex-
chequer against
the heir and
devisee.

chequer on the 24th day of *October* in this term by *Thomas Arden* his attorney, and complains by bill against *Thomas Orby*, esq; and *Charlotte* his wife, *James Hamilton*, esq; duke *Hamilton* of the kingdom of *Scotland* and *Elizabeth* his wife, and *John Erlington*, gent. which said *Charlotte*, *Elizabeth* and *John* are coheirs of *Fitzm* late earl of *Macclesfield*, late brother and heir of *Charles* late earl of *Macclesfield*, lately otherwise called the most honourable *Charles* earl of *Macclesfield*, the same *Charlotte* being one of the sisters of the said late earl's, the said *Elizabeth* being daughter and heir of *Elizabeth* late lady *Gerrard* of *Bromley*, late another of the sisters of the said earl's, and the same *John* being son and

3 & 4 W. &
M. c. 14.
6 & 7 W. 3.
c. 14.

heir of *Anne Erlington*, late also another of the sisters of the said late earl's, and against *Charles lord Mohun*, devisee of the said late earl *Charles*, of certain lands, tenements and hereditaments, which were of the said late earl *Charles* at the time of his death, according to the form of the statute thereof lately made and provided, jointly present here in court the same day, in a plea that they render to the said *Benjamin* 11000*l.* of lawful money of *England*, which they owe to him and unjustly detain, for this, to wit, that whereas the said late earl *Charles* in his life-time on the 4th day of *March* in the year of the Lord 1695, at *Westminster* in the county of *Middlesex* aforesaid, acknowledged himself to be bound to the same *Benjamin* in the said 11000*l.* to be paid to the same *Benjamin*, when he should be thereto required; and the same earl *Charles* well and truly to make the same payment bound himself and his heirs by the same writing: Nevertheless the said earl *Charles* in his life-time, or the said *Charles lord Mohun*, (to whom and to whose heirs the said earl *Charles* by his last will in writing, at *Westminster* aforesaid in his life-time, after the 25th day of *March* in the year of our Lord 1692, duly made and published, bequeathed and devised certain his lands, tenements and hereditaments, of which he then and at the time of his death was seised in his demesne as of fee,) or the said earl *Fitton*, brother and heir of the said earl *Charles*, or the said *Thomas Orby* and *Charlotte* his wife, *James Hamilton* and *Elizabeth* his wife, and *John Erlington* after the death of the said earl *Fitton*, altho' often required, &c. have not render'd, nor hath any of them render'd the said 11000*l.* to the same *Benjamin*, but have denied to render him the same: and the said *Charles lord Mohun*, devisee as aforesaid, *Thomas Orby* and *Charlotte* his wife, *James Hamilton* and *Elizabeth* his wife, and *John Erlington*, do yet deny to render him the same; whereby the same *Benjamin* says that he is prejudiced, and hath damage to the value of 1000*l.* whereby the less, &c. And therefore he produces the suit, &c.

The Queen and Davis.

Debt on bond to
the late king.

London, to wit. *Edward Northey*, knt. attorney general of the lady the now queen who sues for the same queen, complains of *Richard Davis*, otherwise called *Richard Davis* of the parish of *St. Edmond the King, London*, wine-cooper in the custody of the shalshal, &c. in a plea that he render to the said lady the queen 2000*l.* of lawful money of *England* which he owes to the said lady the queen and unjustly detains, for this to wit, that whereas the said *Richard* on the 31st day of *July* in the year of the Lord 1701 at *London* aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, by his certain writing obligatory sealed with the seal of the said *Richard*, and in the court of the said lady the now queen here shewn, the date whereof is the day and year aforesaid, acknowledged himself to be held and firmly bound to the most serene lord *William* the third

late king of England now deceased, in his life-time in the said 2000*l.* to be paid to the same lord the late king, or his successors, when he should be thereto after required: Nevertheless the said Richard, altho' often required, &c. the said 2000 *l.* to the same late lord king William in his life-time, or to the said lady Anne, now queen of England, after the death of the said late lord the king, hath not paid, but the same to the said late lord the king in his life-time, or to the said lady the now queen after the death of him the said late king, hath altogether denied to pay, and the same to the said lady the now queen doth yet deny to pay, to the damage of her the said lady the now queen 100 *l.* And therefore the said attorney general of the lady the now queen, for the said lady the now queen, produces the suit, &c.

Barrington against Archer.

Essex, to wit. **C**Charles Barrington, bart. lord of the manor of King's Hatfield, otherwise Hatfield Broadoake, in the county aforesaid, complains of John Archer, esq; in the custody of the marshal, &c. in a plea that he render to him 20*l.* which he owes to him and unjustly detains, for this, to wit, that whereas the said Charles day of in the third year of the reign of the lady Anne, now queen of England, &c. and for years and more now last past continually hitherto, was seised and yet is seised in his demesne as of fee of and in the manor of King's Hatfield, otherwise Hatfield Broadoake aforesaid in the county aforesaid, which manor is of the ancient demesne of the crown royal of England, in which said manor there is and from time immemorial hath been a custom used and approved, that every person not being born within the manor aforesaid, nor being tenant of lands or tenements held of the manor aforesaid, becoming seised by hereditary descent or otherwise of any lands or tenements held of the manor aforesaid, was used and accustomed to pay a reasonable fine to the lord of the manor aforesaid for the time being, at the court baron of the lord of the manor aforesaid on such person to be set for the liberty of the manor aforesaid: And the same Charles farther says, that one Mary Archer, widow, mother of the said John, whose heir the same John is, in her life-time and at the time of her death was tenant of and in with the appurtenances in the manor of King's Hatfield, otherwise Hatfield Broadoake aforesaid in the county aforesaid, and held of the manor aforesaid, to wit, at King's Hatfield, otherwise Hatfield Broadoake aforesaid in the county aforesaid, and on the day of in the year at King's Hatfield, otherwise Hatfield Broadoake aforesaid in the county aforesaid died thereof seised in her demesne as of fee, whereby the tenements aforesaid with the appurtenances descended to the said John Archer as son and heir of the said Mary; and the same John into the tenements aforesaid with the appurtenances entered, and became thereof seised in his demesne as of fee by hereditary

Debt by a lord of a manor against an heir for a fine on the death of his ancestor. Pract. Reg. 118.

The custom,

The defendant's mother seised in fee.

The descent,

The fine set.

Notice thereof.
Pract. Reg.
155, 157.

Action accrued.

descent, which said *John* was not born within the manor aforesaid, nor was at the time of the death of the said *Mary* tenant of any lands or tenements held of the manor aforesaid: And afterwards, to wit, at a court baron of him the said *Charles*, lord of the manor aforesaid, held for the manor aforesaid at *King's Hatfield*, otherwise *Hatfield Broadoake* aforesaid in the county aforesaid, and within the manor aforesaid day of in the year above said, a fine of 20*l.* being a reasonable fine by the said *John* to the same *Charles* to be paid for the liberty of the manor aforesaid was set, and by reason thereof, according to the custom of the manor aforesaid, to the same *Charles* became due and payable, to wit, at the parish of *King's Hatfield*, otherwise *Hatfield Broadoake* aforesaid in the county aforesaid, of which said fine the same *Charles* then and there gave notice to the said *John*: And the same *Charles* afterwards, to wit, day of in the year last above said, at *King's Hatfield*, otherwise *Hatfield Broadoake* aforesaid in the county aforesaid, demanded of the said *John Archer* the said 20*l.* and the said *John* refused to pay him them, whereby an action accrued to the same *Charles* to demand and have of the said *John Archer* the said 20*l.* Nevertheless the said *John Archer*, altho' often required, &c. hath not yet paid the said 20*l.* to the said *Charles*, but hath altogether refused, and yet doth refuse to pay him the same, to the damage of the said *Charles* 30*l.* And therefore he produces the suit, &c.

[147]

Quennell and Diddlesfold

Debt by an executor against an heir.

Surry, to wit. *S* *Imon Quennell*, executor of the last will and testament of *Peter Quennell* deceased, complains of *William Diddlesfold*, heir of *John Diddlesfold* deceased, to wit, brother and heir of *Richard Diddlesfold*, son and heir of *William Diddlesfold*, brother and heir of the said *John Diddlesfold* late of *Hascombe* in the county of *Surry*, yeoman deceased, otherwise called *John Diddlesfold* of *Hascombe* in the county aforesaid, yeoman, being in the custody of the marshal of the *Marshalsea* of the lord the king, before the king himself in a plea that he render to him 120*l.* of lawful money of *England*, which he unjustly detains from him, for this, to wit, that whereas the said *John* (whose heir the same *William Diddlesfold* the now defendant now is) in his life time, to wit, on the 23d day of *October* in the 29th year of the reign of the lord *Charles* the second, now king of *England*, &c. at *Hascombe* in the county aforesaid, by his certain writing obligatory sealed with the seal of the said *John*, and to the court of the said lord the now king here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *Peter* in his life-time in the said 120*l.* to be paid to the same *Peter*, his executors or administrators, when he should be thereto after required, and well and truly to make the same payment the said *John* in his life time bound

bound himself and his heirs by the same writing: Nevertheless the said *John* in his life-time, nor the said *William* the brother of the said *John* after the death of the said *John*, nor the said *Richard* after the death of the said *William* the brother of the said *John*, nor the said *William Diddlesfold* the now defendant after the death of the said *Richard*, altho' after required, &c. have not yet paid nor hath any of them paid, the said 120 l. to the said *Peter*, in his life-time, nor to the said *Simon* after the death of the said *Peter*, but to pay the same to the said *Peter* in his life-time, and to the said *Simon* after the death of the said *Peter*, have altogether refused, and the said *William Diddlesfold* the now defendant doth yet refuse to pay the same to the said *Simon*, and unjustly detains them from him in delay of the faithful execution of the will aforesaid, and to the damage of the said *Simon* 50 l. And therefore he produces the suit, &c. And the said *Simon* produces here in court the letters testamentary of the said *Peter* aforesaid; by which it sufficiently appears to the court of the said lord the now king here, that the said *Simon* is executor of the will of the said *Peter* aforesaid, and thereof hath the administration, &c.

And now on this day, to wit, *Tuesday* next after the octave of *St. Hillary* in the same term, until which day the said *William Diddlesfold* the now defendant had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Simon* by his attorney aforesaid, as the said *William Diddlesfold* the now defendant by *Christopher Smith* his attorney; and the same *William Diddlesfold* the now defendant comes and defends the force and injury, when, &c. and says that he ought not to be charged with the debt aforesaid as heir of the said *John Diddlesfold* by virtue of the writing obligatory aforesaid; because by protesting that the said writing is not the deed of the said *John Diddlesfold*, for plea the same *William Diddlesfold* the now defendant says, that he hath not any lands or tenements by hereditary descent from the said *John Diddlesfold* in fee-simple, nor had on the said day of the exhibition of the bill aforesaid, nor ever after: And this he is ready to verify: Wherefore he prays judgment, if he as heir of the said *John Diddlesfold* ought to be charged with the debt aforesaid by virtue of the writing aforesaid, &c.

Nothing by descent pleaded.

3. 4 W & M.
c. 14. §. 4.

And the said *Simon* says, that by any thing by the said *William Diddlesfold* the now defendant above in pleading alledged he the same *William Diddlesfold* the now defendant, as heir of the said *John Diddlesfold*, ought to be charged with the debt aforesaid by virtue of the writing obligatory aforesaid, because he says that on *Monday* next after three weeks of *St. Michael* in the 34th year of the reign of the lord *Charles* the second, now king of *England*, &c. on which day the bill aforesaid in court here as aforesaid was exhibited, the said *William Diddlesfold* the now defendant had divers lands and tenements by hereditary descent from the said *John Diddlesfold* in fee simple, wherewith he might have satisfied the said *Simon* the said debt, to wit, at *Hafcombe* aforesaid in the county aforesaid: And this he prays may be in-

Repl. that he hath assets.

quired by of the country: And the said *William Diddlesfold* the now defendant thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Thursday* next after the morrow of the purification of the blessed virgin *Mary*; and who neither, &c. to recognise &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

[148]

Vymer against Holborowe.

Debt on 2 & 3
l. b. c. 13. for
not setting out
tithes.

The defendant
occupier.

And sowed and
mowed.

Gloucester, to wit, *John Vymer*, farmer of the rectory of *Marshfield* in the county aforesaid, complains of *Samuel Holborowe* in the custody of the marshal, &c. in a plea that he render to him 6*l.* of lawful money of *England* which he owes him and unjustly detains, for this, to wit, that whereas the said *John* on the 25th day of *March* in the 2d year of the reign of the lord *James* the second, now king of *England*, &c. and from thence continually hitherto was and yet is farmer of the rectory of *Marshfield* with the appurtenances in the county aforesaid, and of all and singular the tithes to that rectory any way belonging or appertaining, within the parish of *Marshfield* aforesaid in the county aforesaid and the bounds, limits and tithable places of that parish yearly arising, growing, renewing and happening; and the said *Samuel* on the said 25th day of *March* in the second year above said, and from thence continually after until the exhibition of this bill, was and now is occupier and possessor of a close of meadow called *Foxwell's Wood*, containing by estimation 13 acres, and two acres of plough land in the *Northfield* of *Marshfield* aforesaid, and within the parish of *Marshfield* aforesaid in the county aforesaid and the bounds, limits and tithable places of that parish: The tithes of the grain and hay of and from which said close of meadow and two acres of land yearly growing, arising and renewing, for 40 years next before the making of a certain act of parliament made in the parliament of the lord *Edward* the sixth, late king of *England*, held at *Westminster* in the county of *Middlesex* in the second year of his reign, for the true payment of tithes in their proper kind and specie made and provided, of right were due and payable to the rector of the rectory aforesaid, or his farmer or deputy of that rectory for the time being; and the said *Samuel* so as aforesaid for all the time aforesaid being occupier and possessor of the said close of meadow and the two acres of land, and the said *John* being so as aforesaid farmer of the rectory aforesaid, the said *Samuel* afterwards, to wit, on the said twenty-fifth day of *March* in the second year above said plowed said two acres of land and sowed them with wheat; and afterwards, to wit, on the sixth day of *September* in the second year of the reign of the said lord the now king above said, all the grass in and upon the said close of meadow then growing mowed and made into hay, and all the wheat in and upon the said two acres of land then growing did cut down, the tithes of which said hay and wheat of and from the said close of meadow and the said two acres of land as aforesaid growing and arising did of right belong

belong to the same *John* as farmer of the rectory aforesaid, and to him of right ought to have been paid and render'd: Nevertheless the said *Samuel* being a subject of the said lord the now king of this realm of *England* not regarding the statute, nor in any wise fearing the penalties therein contained, did not divide, set out, yield and pay the tenth part of the wheat and hay aforesaid, or any parcel thereof, for the tithes of the same, nor did any way compound or agree with the same *John*, being so as aforesaid farmer of the rectory aforesaid, for the tithes of the same, or any parcel thereof; but the said *Samuel* afterwards, to wit, on the 10th day of *October* in the second year aforesaid, all the grain and hay in the same year so as aforesaid upon the close of meadow aforesaid and the said two acres of land growing, arising and mowed, without any setting out of the tenth part of the same, and without any composition or agreement for the tithes of the same with the said *John* had or made, from the said places where the said hay and wheat did grow, the tithes whereof were then worth 40 s. of lawful money of *England*, did then take and carry away; whereby an action accrued to the said *John* to demand and have of the said *Simon* 6 l. being the treble value of the tithes of the wheat and hay aforesaid by him the said *Simon* against the form of the statute aforesaid as aforesaid taken and carried away: Nevertheless the said *Simon*, altho' often required, &c. the said 6 l. to the same *John* hath not yet paid, but them, &c.

Did not set out the tithes.

Goddard against Fowle.

London, to wit. **T** *Thomas Goddard*, merchant, complains of *Robert Fowle*, goldsmith, executor of the last will and testament of *Thomas Fowle*, knt. lately deceased, being in the custody of the marshal of the *Marshalsey* of the lord and lady *William* and *Mary* now king and queen of *England*, &c. before the king and queen themselves, in a plea that he render to him 123 l. 15 s. which he unjustly detains from him, for this, to wit, that whereas by a certain indenture made the thirteenth day of *March* in the year of the Lord 1688 at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, between the same *Thomas Goddard*, by the name of *Thomas Goddard* of *London*, merchant, of the one part, and the said *Thomas Fowle*, by the name of *Thomas Fowle* of *London*, knt. of the other part, which other part sealed with the seal of the said *Thomas Fowle* in his life-time, and as his deed delivered, the said *Thomas Goddard* produces here in court, the date whereof is the same day and year, reciting that whereas by a certain indenture bearing date the 10th day of *January* in year of our Lord 1671, and in the 23d year of the reign of the lord *Charles* the second, late king of *England*, made or mentioned to be made between the said *Thomas Goddard* and *Elizabeth* his wife, *Francis Sholtrofs* of *Diggleswell* in the county of *Hertford*, esq; and *Henry Sholtrofs*, citizen and merchant taylor of *London*,

Debt for rent on a lease against an executor.

[149]

Recital.

of

Agreement to
levy a fine.

The uses.

Proviso to make
leases.

It is witness'd in
debt is bad.

of the one part, and the said *Thomas Fowle* by the name of *Thomas Fowle* of *London*, goldsmith, of the other part, it was agreed that the said *Thomas Goddard* and *Elizabeth* his wife, *Francis Sholtrofs* and *Henry Sholtrofs*, before the end of *Hillary* term then next ensuing the date of the said indenture, should levy and acknowledge before the justices of the common pleas of the said late king at *Westminster*, to the said *Thomas Fowle* and his heirs, a fine sur cognizance de droit come ceo, &c. with proclamations, of all that messuage or tenement situate in *Fleetstreet* between the *Inner-Temple Gate* and the *Middle-Temple Gate* in the parish of *St. Dunstan* in the *West* in the city of *London*; then in the occupation of *Richard Clarke* or his assigns or under-tenants, and of all that messuage or tenement situate in *Fleetstreet* aforesaid in the city of *London*, next adjoining to the said messuage, and then or late in the tenure or occupation of *John Grove* or his assignee or assignees, together with all and singular their appurtenances to the same belonging or in any wise appertaining, and of all other messuages and tenements of the said *Thomas* and *Elizabeth Goddard*, or either of them, situate and being in the parish of *St. Dunstan* in the city of *London*, by such name or names, addition or description, to ascertain the same, as should be thought fit; and it was by the said indenture declared that the said fine, so or in any other manner to be had or levied, should be and enure to the use of the said *Thomas Goddard* for his life, and after his decease to the use of the said *Elizabeth*, the wife of the said *Thomas Goddard* for her life, and after the death of the said *Thomas Goddard* and *Elizabeth* his wife, then to several other uses in the said indenture mentioned and declared, under and with the proviso following: Provided always, and it was agreed by and between the parties to the said indenture, and by them declared and agreed to be their intent and meaning, that it should be lawful to and for the said *Thomas Goddard* at any time or times during his natural life, and for the said *Elizabeth* after the decease of the said *Thomas Goddard*, to make or grant any lease or leases of the premises or any parcel thereof by indenture, for any term or terms of years, either in possession or in reversion, so that there should be thereon reserved and payable for such of the said messuages as should be so demised, during such whole terms respectively as should be so granted or made, so much yearly rent respectively as such respective messuage or tenement had been demised or let for by the greater part of ten years then last past, and so that the term of years in any new lease of the premises, and of the years then to come of all or any term or terms of years of the same, before such new lease in being, should not exceed in the whole 21 years, as by the said recited indenture, and fine which was accordingly levied of the said messuages and premises, relation being thereunto had, more at large appears: And whereas also the said *Thomas Fowle* then had a lease of the said first mentioned messuage at the yearly rent of 40*l.* which said lease would be expired on the 2d day of *May* which would be in the year of our Lord God 1691, it was witness'd

nessed that for and in consideration of the surrender of the said indenture, and in pursuance and by virtue of the said recited proviso and the power and authority thereby to the said *Thomas Goddard* reserved, and in consideration of the sum of 500 l. of lawful money of *England* to the said *Thomas Goddard* in hand paid at or before the sealing of the said indenture by the said *Thomas Fowle*, for and in the name of a fine or income, the receipt whereof he the said *Thomas Goddard* by the said indenture did acknowledge, and thereof did acquit and discharge him the said *Thomas Fowle*, his executors, administrators and assigns by the said indenture, 150 l. part of which said 500 l. the said *Thomas Goddard* had laid out in building and repairing of the said first messuage, then in the tenure or occupation of the said *Thomas Fowle*, and for the advance and increase of the rent thereof, and in consideration of the rent, covenants, provisos and agreements in the said indenture after reserved and mentioned on the part and behalf of the said *Thomas Fowle*, his executors, administrators and assigns to be paid, done and performed, the said *Thomas Goddard* had demised, granted, and to farm let, and by the said indenture did demise, grant, and to farm let, to the said *Thomas Fowle*, his executors, administrators and assigns, all that messuage or tenement with the shops, cellars, cellars, yards, chambers, rooms and garrets thereunto belonging, and in the tenure or occupation of the said *Thomas Fowle*, or his under tenants or assigns, situate and being in *Fleetstreet* aforesaid between the *Inner-Temple gate* and the *Middle-Temple gate* in the said parish of *St. Dunstan* in the *West* in the city of *London* aforesaid, and all lights, easements, profits, watercourses, commodities and appurtenances whatsoever to the said demised messuage and premises then belonging, except and always reserved, and by the said indenture it was declared and agreed, that all drains, gutters, pipes, currents, water-courses and passages of and for water, and privileges, eaves-droppings, and all easements, lights, windows, and other privileges and accommodations on, by and thro' the said messuage by the said indenture demised, or any part thereof, which then were made, used, accustomed or belonging to the said messuage or tenement belonging to the said *Thomas Goddard*, late in the occupation of the said *John Grove*, and then in the occupation of *William Osborne*, to the said demised premises adjoining, should remain, continue, and be held and enjoyed therewith during the term by the indenture within granted in such sort as the same were then used, held and enjoyed; To have and to hold the said demised messuage or tenement and premises with the appurtenances, and every part and parcel thereof (except as before excepted) to the said *Thomas Fowle*, his executors, administrators and assigns, from the second day of *November* then last past before the date of the said indenture for and during and to the full end and term of 20 years and a half of a year thence next following fully to be compleat and ended; Yielding and paying therefore to the said *Thomas Goddard* and his assigns yearly and every year, and from time to time during the term

[150]

Habend'.

Reddend' to him
 and to such persons, &c.

Entry of the
lessee.

Rent due in the
testator's time.

Rent due in the
executor's time.

term of 20 years and a half of a year by the said indenture granted, if the said *Thomas Goddard* should so long live, and after his decease to such person or persons to whom the next use or estate of and in the said messuage or tenement and premises, according to the limitation of the respective uses and estates in and by the said recited indenture limited should belong, the yearly rent or sum of 55 *l.* of lawful money of *England* at four several days of payment in the year, that is to say, the second day of *February*, the second day of *May*, the second day of *August*, and the second day of *November*, by even and equal portions, as by the said indenture here in court produced, relation being thereunto had, (among other things) is more fully manifest and appears: By virtue of which said demise the said *Thomas Fowle* in his life-time into the messuage aforesaid with the appurtenances entred and was thereof possessed, and the messuage aforesaid with the appurtenances from the said 2d day of *November* in the year of the Lord 1688 until the second day of *November* 1692, and after, held and occupied; and the said *Thomas Fowle*, *knt.* on the 11th day of *November* last aforesaid died, to wit, at *London* aforesaid in the parish and ward aforesaid, and 110 *l.* of the rent aforesaid, parcel of the said 123 *l.* 15 *s.* for two years ended on the said second day of *November* in the year of the Lord 1692 were then in arrear and unsatisfied, and yet remain unpaid to the said *Thomas Goddard*; whereby an action accrued to the said *Thomas Goddard* to demand and have of the said *Thomas Fowle* in his life-time, and of the said *Robert* after the death of the said *Thomas Fowle*, the said 110 *l.* parcel of the said 123 *l.* 15 *s.* as also 13 *l.* 15 *s.* residue of the said 123 *l.* 15 *s.* of the rent aforesaid, which after the death of the said *Thomas Fowle*, *knt.* for a quarter of a year ended on the second day of *February* in the year of the Lord 1692 aforesaid were in arrear and not satisfied to the said *Thomas Goddard*, and yet remain unpaid, whereby an action accrued to the same *Thomas Goddard* to demand and have of the said *Robert Fowle* the said 13 *l.* 15 *s.* (residue of the said 123 *l.* 15 *s.*): Nevertheless the said *Thomas Fowle* in his life-time, and the said *Robert* after the death of the said *Thomas Fowle*, altho' often required, &c. the said 110 *l.* parcel of the said 123 *l.* 15 *s.* or part thereof, have not paid, nor hath either of them paid to the same *Thomas Goddard*, nor hath the said *Robert* paid to the said *Thomas Goddard* the said 13 *l.* 15 *s.* or any part thereof, but the said *Robert* hath denied to pay to the same *Thomas Goddard* the said 123 *l.* 15 *s.* and doth yet deny to pay him, and unjustly detains the same, to the damage of the said *Thomas Goddard* 60 *l.* And therefore he produces the suit, &c.

Fawcett against Chapman.

Richard Fawcett, who as well, &c. complains of *William Chapman* in the custody of the marshal, &c. in a plea that he render to the lord the king and to the same *Richard*, who as well, &c. 70*l.* of lawful money of *England*, which to the said lord the king and to the same *Richard*, who as well, &c. he owes and unjustly detains, for this, that the said *William* on the first day of *April* in the 4th year of the reign of the said lord the now king, and from thence continually after for the space of one whole year then next following, had been and continued a spiritual person and beneficed, to wit, the said *William* for all that time was and yet is vicar of the vicaridge of the parochial church of *M.* and beneficed in the same, and that the same *William* by the space of seven whole months concurring together in the year aforesaid, to be computed from the 1st day of *May* in the same year, was not personally resident and abiding in, at and upon his said benefice, nor in, at or upon any other his benefice, but the same *William* absented himself wilfully by the said space of seven months from his said benefice, nor was resident upon his benefice aforesaid, nor in, at or upon any other benefice, against the form of the statute in such case made and provided; whereby an action accrued to the same *Richard*, who as well, &c. to demand and have of the said *William* 70*l.* to wit, 10*l.* for every month by the said *William* against the form of the said statute as aforesaid offended: Nevertheless the said *William*, altho' often required, &c. the said 70*l.* to the said lord the king or to the same *Richard*, who as well, &c. hath not yet paid, but hath altogether denied and yet doth deny to pay them the same; whereby the same *Richard*, who as well, &c. says that he is prejudiced, and hath damage to the value of 20*l.* And therefore as well for the said lord the king as for himself he produces the suit, &c.

Debt on the 31
H. 8. c. 13. §
26. of non-
residence.

The queen dowager against Briggs.

Middl, to wit. **T**HE most excellent lady *Catharine* queen dowager of *England*, &c. complains of *William Briggs*, esq; marshal of the *Marshalsey* of the now lord and lady the king and queen before the king and queen themselves, being present here in court in his proper person, in a plea that he render to her 1006*l.* 10*s.* of lawful money of *England*, which he owes to her and unjustly detains, for this, to wit, that whereas the said lady *Catharine* queen dowager of *England*, &c. otherwise, to wit, in *Trinity* term in the 5th year of the reign of the lord and lady the now king and queen, in the court of the said king and queen before the king and queen themselves, at *Westminster* in the county of *Middlesex* then and yet being, did recover by the judgment of the said court against one *Francis*

Debt against the
marshal for an
escape.

The recovery.

The commitment in execution.

The escape.

[152]

Francis Hynde the younger 1006 *l.* 10 *s.* which to the same lady *Catharine* in the same court here were adjudged for her damages, which she had sustained as well by reason of the non-performance of a certain promise and assumption to the same lady *Catharine* by the said *Francis* lately made, as for her costs and charges by the said lady *Catharine* about her suit in that behalf expended, whereof the same *Francis* is convicted, as by the record and process thereof in the court of the lord and lady the king and queen before the king and queen themselves remaining is more fully manifest and appears: And afterwards, to wit, on *Saturday* next after fifteen days of the Holy *Trinity* in the said *Trinity* term in the 5th year of the reign of the said lord and lady *William* and *Mary* now king and queen of *England*, &c. abovesaid, before the said lord and lady the king and queen at *Westminster* came the said lady *Catharine* queen dowager of *England* in her proper person: And the same *Francis Hynde* being then present in the same court, at the petition of the said lady *Catharine* queen dowager of *England*, by the court abovesaid was committed to the custody of the said *William Briggs*, being then and yet marshal of the *Marshalsey* of the said court of the lord and lady the king and queen before the king and queen themselves, in execution for the damages abovesaid at the suit of the said lady *Catharine* queen dowager of *England*, there to remain in execution until he should fully satisfy the damages to the said lady *Catharine* queen dowager of *England*, as by the record thereof in the court of the said lord and lady the king and queen before the lord and lady the king and queen themselves at *Westminster* abovesaid remaining more fully is manifest and appears: By virtue of which commitment the said *William Briggs*, being then and yet marshal of the *Marshalsey* abovesaid, the said *Francis Hynde* into his custody in execution for the damages abovesaid then and there took, had and detained: Nevertheless the said *William Briggs*, being then and yet marshal of the *Marshalsey* of the lord and lady the king and queen before the king and queen themselves, afterwards, to wit, on the tenth day of *August* in the sixth year of the reign of the said lord and lady the now king and queen, &c. at *Westminster* in the county of *Middlesex* abovesaid, the said *Francis Hynde* out of the custody of him the said *William Briggs* and from the execution abovesaid without the licence and against the will of the said lady *Catharine* queen dowager, (the same lady *Catharine* queen dowager then or ever after of the damages abovesaid or of any part thereof not being satisfied), at large where he would be permitted freely and voluntarily to go and escape; whereby an action accrued to the same lady *Catharine* queen dowager to demand and have of the said *William Briggs* the said 1006 *l.* 10 *s.* Nevertheless the said *William Briggs*, altho' often required, &c. the said 1006 *l.* 10 *s.* to the said lady *Catharine* queen dowager hath not paid, but hath hitherto altogether denied and yet doth deny to pay her the same, to the damage of her the said lady *Catharine*

Catharine queen dowager 40*l*. And therefore she produces the suit, &c.

And the said *William Briggs* in his proper person comes and defends the force and injury when, &c. and says, that the said lady *Catharine* queen dowager of *England* ought not to have or maintain her action aforesaid thereof against him, because he says, that after the commitment of the said *Francis Hynde* to the custody of the said *William Briggs* in execution for the damages aforesaid in form aforesaid, and at the time of the escape aforesaid above supposed to be made, to wit, on the said 10th day of *August* in the 6th year of the reign of the lord and lady the now king and queen of *England*, &c. aforesaid, the said *Francis* being in execution for the damages aforesaid under the custody of the said *William Briggs* in the prison of the lord and lady the king and queen, situate in the parish of *St. George Southwark* in the county of *Surry*, he the said *Francis* the prison aforesaid with force and arms, &c. broke, and out of prison against the will of him the said *William* then and there escaped, and ran to places to the said *William* unknown: And the said *William* farther says in fact, that he the said *William* expeditiously, diligently and recently after the said escape as aforesaid made, at *Southwark* aforesaid in the county aforesaid, pursued to retake the said *Francis*, and the pursuit aforesaid from thence from place to place and from county to county made and continued until the said *William* afterwards, and before the exhibition of this bill, to wit, on the 21st day of *September* in the 6th year aforesaid the said *Francis* in the pursuit aforesaid, at *Westminster* aforesaid in the county aforesaid, took and in prison put in execution for the damages aforesaid at the suit of the said lady the queen dowager of *England*, &c. and yet there detains him; and the said *Francis* in the prison aforesaid being, under the custody of the said *William* in execution for the damages aforesaid, from thence hitherto hath so remained and yet doth so remain; which said escape of the said *Francis* out of the prison aforesaid (as is aforesaid) is the same escape of which the said lady the queen dowager above against him complains: And this he is ready to verify: Wherefore he prays judgment if the said lady the queen dowager of *England* ought to have or maintain her action thereof aforesaid against him, &c.

Plea, that the prisoner made a tortious escape.

That he took him on fresh suit and yet has him.

Edward Northey.

And the said lady *Catharine* queen dowager of *England* says, that she by any thing by the said *William Briggs* above in bar by pleading alledged ought not to be precluded from her action aforesaid thereof against him the said *William* had, because she says, that after the commitment aforesaid of the said *Francis Hynde* to the custody of the said *William Briggs* in execution for the damages aforesaid, the said *William Briggs* of his own wrong against the will of the said lady *Catharine* queen dowager of

Repl. that the defendant voluntarily permitted him to escape.

Traverse.

of *England*, (the same lady *Catharine* queen dowager not being satisfied for the damages aforesaid), permitted the said *Francis Hynde* to go and escape at large as the said lady *Catharine* queen dowager of *England* above hath declared; without that, that the said *Francis Hynde* broke the prison aforesaid, and escaped out of the prison aforesaid, against the will of the said *William*, as the said *William* above in pleading hath alledged: And this she is ready to verify: Wherefore she prays judgment and her debt aforesaid, together with her damages by reason of the detention of that debt, to be adjudged to her, &c.

Creswell Levinz.

Demurrer to the replication.

And the said *William* says, that the plea aforesaid by the said lady *Catharine* queen dowager of *England* in manner and form above in replying pleaded, and the matter in the same contained, are not sufficient in law to maintain her action aforesaid thereof against him the said *William* had; and that he to the plea aforesaid in manner and form aforesaid pleaded hath no necessity nor is by the law of the land obliged in any manner to answer: And this he is ready to verify: Wherefore for want of a sufficient replication in this behalf, the same *William* as before prays judgment, and that the said lady *Catharine* queen dowager of *England* may be precluded from her action aforesaid thereof against him had, &c.

Edward Northey.

[153]
Joinder in demurrer.

And the said lady *Catharine* queen dowager of *England* says, that the plea aforesaid by her the said lady *Catharine* queen dowager of *England* in manner and form aforesaid above by replying pleaded, and the matter in the same contained, are good and sufficient in law to maintain the action of her the said lady *Catharine* queen dowager of *England* aforesaid thereof against the said *William* had: Which said plea, and the matter in the same contained, she the same lady *Catharine* queen dowager of *England* is ready to verify and prove, as the court, &c. And because the said *William* doth not answer to that replication, nor hitherto any way deny it, she the same lady *Catharine* queen dowager of *England* (as before) prays judgment and her debt aforesaid, together with her damages by reason of the detention of that debt, to be adjudged to her, &c. But because, &c.

Farrington and Lenthall.

Debt against a gaoler for refusing a copy of his commitment.
Pract. Reg. 4.

Surry, to wit. *John Farrington*, gent. complains of *William Lenthall*, esq; marshal of the *Marshalsey* of the court of the lord and lady the now king and queen before the king and queen themselves, present here in court in his proper person, in a plea that he render to him 100*l.* of lawful money of *England* which he owes him and unjustly detains, for this,

this, to wit, that whereas after the first day of *July* in the year of the Lord 1679, he the same *John Farrington* in the vacation-time and out of term, to wit, on the 20th day of *March* in the second year of the reign of the lord and lady *William* and *Mary* now king and queen of *England*, at the parish of *St. George* in *Southwark* in the county of *Surry*, was taken and detained in prison by the said *William Lenthall* without any warrant or commitment for treason or felony in the same expressed: And whereas afterwards, to wit, on the 29th day of *March* in the second year of the reign of the said lord and lady the king and queen above said, at the parish aforesaid in the county aforesaid, the same *John Farrington* demanded of the said *William Lenthall* a true copy of the warrant of commitment and detainer of him the said *John Farrington* in the prison aforesaid by him the said *William Lenthall*: Nevertheless the said *William Lenthall*, although often required, within the space of six hours after the said demand did not deliver to him a true copy of the warrant of commitment and detainer of him the said *John Farrington* in the custody of the said *William Lenthall*, but did wholly neglect and omit to deliver it to him, against the form and effect of the statute in such case lately made and provided; whereby and by force of the statute of the said *William Lenthall* forfeited the sum of 100*l.* whereby by virtue of the statute aforesaid an action accrued to the said *John Farrington*, being the party grieved, to demand and have of the said *William Lenthall* the said 100*l.* Nevertheless the said *William*, although often required, &c. hath not paid the said *John* the said 100*l.* or any penny thereof, but hath hitherto altogether denied and yet doth deny to pay him the same, to the damage of the said *John* 10*l.* And therefore he produces the suit, &c.

31 Car. 2. c. 2.
§ 5.

The company of Stationers and Hunt.

London, to wit. **T**HE master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* complain of *John Hunt* in the custody of the marshal, &c. in a plea that he render to them 40*l.* of lawful money of *England*, which he owes to them and unjustly detains, for this, to wit, that whereas the lord and lady *Philip* and *Mary* late king and queen of *England* by their letters patent sealed under their great seal of *England*, bearing date at *Westminster* the fourth day of *May* in the third and fourth year of their reign, of their special grace, certain knowledge and mere motion, did will, give and grant for themselves and the heirs and successors of the said queen to their then beloved and faithful liege subjects *Thomas Dockray*, &c. freemen of the mystery or art of stationers of their city of *London* and the suburbs of the same, that they from thenceforth should be in deed, fact and name a perpetual body and company incorporated of a master and two keepers, or wardens and commonalty of the same

Debt on a by-law for not accepting the livery.

The letters patent of incorporation.

Master appointed.

[154]

Power to make by-laws.

mystery or art of stationers of the city aforesaid, and that they should have a perpetual succession: And farther the same lord and lady the king and queen of their special grace, certain knowledge and meer motion, by their same letters patent ordered, created, erected, made and constituted the said *Thomas Dockray* master of the same mystery or art of stationers of the city aforesaid during one year then next ensuing, and the said *Thomas Cawood* and *Henry Cook* keepers or wardens of the same mystery or art of stationers of the city aforesaid for one year then next following, and the said *William Bonham* and *Richard Way*, &c. the commonalty of the same mystery or art of stationers of the city aforesaid, by the letters patent aforesaid made, created and constituted: And farther the same lord and lady the king and queen ordered, created, erected, made and constituted by their same letters patent the said master, keepers and commonalty, in fact and in name a perpetual body of itself and a pertual company, incorporated of a master and two keepers or wardens and commonalty of the same mystery or art of stationers of the city of *London* aforesaid, and the said master, keepers or wardens and commonalty incorporated and a body corporate by the name of master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* for ever to endure, really and fully willed, granted, created, erected, ordained, made, declared and constituted by the said letters patent: And that the said master and keepers or wardens and commonalty from thenceforth should have a perpetual succession; and that the said master and keepers or wardens and commonalty and their successors should for ever be named and called by the name of the master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*, and by that name should and might plead and be impleaded, answer and be answered in all and singular matters, suits and plaints, actions, demands and causes, before any judges and justices whatever, and in any courts and places whatever, and should have a common seal to serve and be made use of in their affairs and business, and for sealing all and singular their deeds and writings in any manner touching or concerning their affairs and business; and that the said master and keepers or wardens and commonalty and their successors might from time to time make, ordain and establish, for the good and wholesome regimen and government of the freemen of the said art or mystery and the commonalty aforesaid, orders, provisions and statutes as often as they should think fit and convenient, so as those orders, provisions and statutes should not be in any wise repugnant or contrary to the laws or statutes of this their realm, or to the prejudice of the republic of their same realm; and that they and their successors for ever should and might make lawful and honest assemblies of themselves to make such statutes and orders, and transact other affairs for the benefit of the said mystery or art of stationers and commonalty of the same, and for other law-

ful causes in form aforesaid, as often as they should think proper, lawfully and without any molestation or disturbance of the said lord and lady the king and queen, or of the heirs or successors of the said lady the queen or of any other, as by the letters patent aforesaid inrolled of record in the court of chancery of the lord and lady the now king and queen at *Westminster*; the exemplification of which said inrolment under the great seal of the lord *Charles* the second; late king of *England*, &c. bearing date at *Westminster* 23d day of *October* in the 36th year of his reign; the same master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* here in court produce; more fully is manifest and appears: And the same master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* in fact say, that after the making of the letters patent aforesaid, and before the exhibition of this bill; to wit, on the 14th day of *May* 1694, at *London* aforesaid in the parish of *St. Martin Ludgate* in the ward of *Farringdon Within*, they the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*, being then and there assembled for the good government of the said freemen of the art or mystery aforesaid, and of the commonalty aforesaid and their successors; did (among other things) make and ordain a certain ordinance not repugnant or contrary to the laws of this kingdom of *England*; nor in any way tending to the prejudice of the republick of *England*, to wit, that the master; wardens and assistants of the said company or the major part of them, in a court of assistants to be held according to the usage of the same company when and as often as it should seem to them expedient; should elect and admit such member and members of the said company into the livery or cloathing of the said company as they should think fit, and that the person so elected; upon his admission into the livery or cloathing, should pay to the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* the usual sum of 20*l.* for such his or their admission thereto; and if any such person so elected into the livery or cloathing as aforesaid, on notice thereof, should not accept thereof; having no reasonable cause to refuse it; then he should pay to the master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* for such his refusal the sum of 40*l.* of lawful money of *England*; which said order so as aforesaid made afterwards; to wit; on the 31st day of *May* 1694; at *London* aforesaid in the parish and ward aforesaid, at the request of the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*; and according to the tenor of a certain act of parliament in such case made and provided; by the right honourable *John Sommers*; knt. lord keeper of the great seal of *England*, *John Holt* knt. lord chief justice of the said lord the king and the then lady the queen, assigned to hold pleas in the

The by-law made on which the action is brought.

The confirmation of it.

19 H. 7. c. 7.

[155]

The defendant
a freeman.

Elected into the
livery.

But refused.

court of the said lord the king and the then lady the queen before the said lord the king and the then lady the queen themselves, and *George Treby*, knt. lord chief justice of the said lord the king and then lady the queen of the bench at *Westminster*, was seen, read and examined, and by them approved and confirmed: And the same master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* in fact say, that the said *John* after the making of the order aforesaid, and before the exhibition of this bill, to wit, on the first day of *May* in the year of the Lord 1695, was and from thence continually afterwards hitherto hath been and yet is a freeman and a member of the said company of master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*, to wit, at *London* aforesaid in the parish and ward aforesaid; and that after the first day of *May* in the year of the Lord last aforesaid, and before the exhibition of this bill, to wit, at a court of assistants of them the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*, held according to the usage of the said company at *Stationers-hall* in the parish and ward aforesaid, on *Monday* the fifth day of *August* in the year of the Lord 1695, by *John* then master, *William Rawlins* and *Samuel Lowndes* then wardens, and *Roger Norton*, *Edward Bruester*, &c. then assistants of the said company, being then present and assembled, and being then the major part of the master, wardens and assistants of the company aforesaid, he the said *John Hunt*, then being a freeman and a member of the company aforesaid, by the said master, wardens and assistants so as aforesaid in the court of assistants aforesaid assembled, then and there was elected into the livery of the company of them the said masters and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*; and altho' he the said *John* afterwards, to wit, on the 5th day of *October* in the year of the Lord last aforesaid, at *London* aforesaid in the parish and ward aforesaid, had notice as well of the order aforesaid as of the election aforesaid, and was required by the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* to accept the livery aforesaid: Nevertheless the said *John* then and there altogether refused to accept it, and the livery aforesaid then or at any other time hath not accepted, the said *John* not having any reasonable cause to refuse the livery aforesaid, against the form and effect of the order aforesaid; whereby an action accrued to the same master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*, to demand and have of the said *John Hunt* the said 40*l.* Nevertheless the said *John Hunt*, altho' often required, &c. the said 40*l.* to the same master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* hath not yet paid, but hath altogether denied, and yet doth deny to pay

them the same, to the damage of them the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* 50*l.* And therefore they produce the suit, &c.

Tindall and Wood.

Hill. 7 W. 3.

Midd^s, to wit. *Mary Wood* late of *London*, widow, executrix of the last will and testament of *Edward Wood* of the parish of *St. Giles Cripplegate* in the county of *Middlesex*, graier, was summoned to answer *Henry Tindall* in a plea that she render to him 36*l.* 15*s.* which she owes him and unjustly detains, &c. And whereon the same *Henry* by *William Millman* his attorney says, that whereas by certain articles of agreement made at the said parish of *St. Giles Cripplegate* on the 23d day of *October* in the year of the Lord 1689, between him the said *Henry Tindall*, by the name of *Henry Tindall*, citizen and blacksmith of *London*, of the one part, and the said *Edward*, by the name of *Edward Wood* of the parish of *St. Giles Cripplegate* in the county of *Middlesex*, graier, of the other part, which other part sealed with the seal of the said *Edward* the same *Henry* produces here in court, the date whereof is the same day and year, the same *Henry* had demised, granted, set and to farm let, to the said *Edward* all those six acres of meadow land more or less lying and being in a common field called the *Pesthouse field*, and in the field behind a certain house called the *Half-way house*, and in the field commonly called the *Conduit field*, in the several parishes of *St. Giles Cripplegate* aforesaid and of *St. Leonard Shoreditch* in the said county of *Middlesex*; To have and to hold to the said *Edward*, his executors, administrators and assigns, from the feast-day of the nativity of our blessed Lord and Saviour then next ensuing for the term of seven years from thence next following and fully to be compleat and ended; Yielding and paying therefore yearly the sum of 3*l.* 10*s.* for every acre of the said land, being in the whole 21*l.* by even and equal portions quarterly at the feast of the annunciation of the blessed virgin *Mary*, the feast of the nativity of *St. John* the baptist, the feast of *St. Michael* the archangel, and the feast of the nativity of our Lord, as by the same articles (among other things) is more fully manifest and appears: By virtue of which demise the same *Edward* into the tenements and premisses above demised with the appurtenances entred, and was thereof possessed; and so being thereof possessed the same *Edward* afterwards, to wit, on the first day of *March* in the sixth year of the reign of the lord *William* now king and the lady *Mary* late queen of *England*, &c. at the said parish of *St. Giles Cripplegate* made his last will and testament in writing, and constituted and ordained the

Debt against an executrix for rent due in her own time.

It should be in the *Detinet* only. Upon articles.

The demise.

Habund^s.

[156]

Reddend^s.

Lessee made the defendant executrix and died, and she entred.

said *Mary* executrix thereof, and afterwards there died so thereof possessed, after whose death the said *Mary* did there take upon herself the burden of the execution of the will aforesaid, and afterwards, to wit, the same day and year into the tenements and premisses aforesaid above demised and granted entred, and was thereof possessed by reason of the execution of the will aforesaid, and 36*l.* 5*s.* of the rent aforesaid for one year and three quarters of a year at the feast of St. *Michael* the archangel in the 7th year of the reign of the lord the now king were in arrear and are yet unpaid; whereby an action accrued to the same *Henry* to demand and have of the said *Mary* the said 36*l.* 5*s.* Nevertheless the said *Mary*, altho' often required, &c. the said 36*l.* 5*s.* to the same *Henry* hath not yet paid, but hath hitherto denied, and yet doth deny to pay her the same; whereby he says that he is prejudiced, and hath damage to the value of 40*l.* And therefore he produces the suit, &c.

The defendant
pleads an assign-
ment by the
lessor, and that
the assignee en-
tered in the les-
see's life time.

And the said *Mary* by *Francis Reading* her attorney comes and defends the force and injury when, &c. and says, that the said *Henry Tindall* ought not to have or maintain his action aforesaid thereof against her, because she says, that after the making of the articles aforesaid in the declaration aforesaid mentioned, the said *Edward Wood* in his life-time, by his certain writing sealed with his seal, made at the parish of St. *Giles Cripplegate* aforesaid in the county aforesaid on the 21st day of *January* in the year of the Lord 1692, which the same *Mary* here in court produces, for and in consideration of the sum of 18*l.* 5*s.* 6*d.* to the same *Edward* in hand paid by one *Ralph Harwood*, bargained, sold and assigned, to the said *Ralph Harwood* all his estate, right, title, property, benefit, claim and demand whatsoever of, in, to or out of the demised premisses aforesaid, by force and virtue of the said demise, writing or instrument, or otherwise howsoever; by virtue whereof he the said *Ralph* afterwards, to wit, the first day of *February* in the year of the Lord 1692 aforesaid, into the demised premisses so to him as aforesaid bargained, sold and assigned, with the appurtenances, entred, and was and yet is thereof possessed: And the same *Mary* farther says, that he the said *Edward Wood* in his life-time afterwards, to wit, on the 10th day of *February* in the year last aforesaid, at the parish aforesaid in the county aforesaid, gave notice to the same *Henry* of the assignment aforesaid to the said *Ralph* so as aforesaid made: And this the same *Mary* is ready to verify: Wherefore she prays judgment if the said *Henry* ought to have or maintain his action aforesaid thereof against her, &c.

On this issue was joined, but the plaintiff did not dare to go on because his declaration should have been in the Detinet only, and not in the Debt & Detinet.

Pelline.

Pelline and Fox.

Midd., to wit. **BE** it remember'd that on the 23d day of *January* in this same term comes here into court *Cornelius Pelline* by *John Brooke* his attorney, and exhibits his bill against *Thomas Fox*, esq; warden of the prison of the lord the now king of the *Fleet*, present here in court in his proper person, in a plea of debt, the tenor of which said bill follows in these words: To the justices of the lord the king of the bench, *Middlesex*, to wit, *Cornelius Pelline* by *John Brooke* his attorney complains of *Thomas Fox*, esq; warden of the prison of the lord the king of the *Fleet*, present here in court in his proper person, for this, that he hath not paid to the same *Cornelius* 151 l. 3 s. of lawful money which he owes him and unjustly detains, for this, to wit, that whereas the said *Cornelius*, otherwise, to wit, in *Easter* term in the 4th year of the reign of the lord the now king and the lady *Mary* late queen of *England*, &c. in the court of the said lord the king and the lady the late queen before the king and late queen themselves, the same court then being at *Westminster* in the county of *Middlesex*, did by the judgment of the same court recover against *Mark Goodyear*, otherwise called *Mark Goodyear*, of *London*, gent. 150 l. debt, as also 23 s. for his damages which he had sustained as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the same *Mark* is convicted, as by the record thereof now remaining in the court of the said lord the now king before the king himself at *Westminster* more fully is manifest and appears; which said debt and damages in the whole amount to the said 151 l. and 3 s. and afterwards, to wit, on *Monday* next after the octave of the purification of the blessed *Mary* in *Hillary* term in the 4th and 5th year of the reign of the said lord the king and lady the late queen, in the court of the said lord the king and the lady the late queen before the king and late queen themselves at *Westminster*, came the said *Cornelius* in his proper person, and the said *Mark* then in the same court present, and being in the same court then at the petition of the said *C.* was by the same court duly committed to *W. B.* esq; being then marshal of the *Marshalsey* of the said lord the king and the lady the late queen, before the lord the king and the lady the late queen themselves at *Westminster*, in execution at the suit of the said *C.* for the debt and damages aforesaid, there to remain until, &c. as by the record and proceedings thereof in the same court of the said lord the king before the king himself at *Westminster* remaining more fully appears; by virtue of which said commitment, the said *W. B.* being then and yet marshal of the *Marshalsey* aforesaid received him the said *M.* into his custody in execution for the debt and damages aforesaid, and had detained and kept him the said *M.* in execution for the debt and damages aforesaid; and he the said *M.* being as aforesaid in the custody

Bill against the warden of the *Fleet* for an escape out of execution.

The recovery of the judgment.

[157]

The party committed in execution.

Turned over to
the Fleet, on a
Habeas corpus.

Suffered the
party to escape.

Demurred to
the bill
Salk. 753.

stody of the marshal of the *Marshalsey* aforesaid, in execution for the debt and damages aforesaid, afterwards, to wit, on the said 7th day of *July* in the fifth year of the reign of the said lord the king and the lady the late queen, he the same *M.* being so as aforesaid in execution for the debt and damages aforesaid, by virtue of a writ of the said lord the king and the lady the late queen of *Habeas corpus cum causa*, out of the court of the said lord the king and the lady the late queen of the bench here duly issuing, and to the said marshal of the *Marshalsey* of the said lord the king and the lady the late queen before the lord the king and the lady the late queen themselves directed, was brought and had, charged in execution with the cause aforesaid before *John Powell*, being then one of the justices of the said lord the king and lady the late queen of the bench here, with the cause aforesaid, at the parish of *St. Clement Danes* in the county of *Middlesex* aforesaid by the marshal of the *Marshalsey* aforesaid; and thereupon the said *M.* by the said *John Powell*, then one of the justices of the said lord the king and the lady the late queen of the bench here as aforesaid, then and there, to wit, on the said 7th day of *July* in the fifth year aforesaid at the said parish of *St. Clement Danes* aforesaid was duly committed to the custody of the said *Thomas Fox*, then and yet warden of the prison of the *Fleet* aforesaid, charged in execution for the debt and damages aforesaid, as by the record and proceedings thereof in the same court of the said lord the king of the bench here remaining more fully appears; By virtue of which said commitment the said *Thomas Fox*, then being warden of the prison of the *Fleet* aforesaid, the said *M.* in his custody in execution for the debt and damages aforesaid then and there had and detained; and the said *Thomas Fox*, warden of the prison of the *Fleet* then and yet being afterwards, to wit, on the 23d day of *November* in the sixth year of the reign of the said lord the king and the lady the late queen, at the parish of *St. Clement Danes* aforesaid, the premises well knowing, not regarding the duty of his office, but contriving and fraudulently intending to cause the said *Cornelius* totally to lose the debt and damages aforesaid, the said *M.* out of the custody of him the said *Tho. Fox*, being then and yet warden of the said prison of the *Fleet* aforesaid, and out of the execution aforesaid, against the will and without the licence or knowledge of the said *Cornelius*, the same *Cornelius* of the debt and damages aforesaid, or of any part thereof, being not satisfied, at large where he would then and there permitted to go and escape; whereby an action accrued to the same *Cornelius* to demand and to have of the said *Thomas Fox* the said 151 l. 3s. Nevertheless the said *Thomas Fox* the said 151 l. 3s. to the said *Cornelius* hath not yet paid, but hath hitherto altogether denied to pay him the same; whereby he says that he is prejudiced, and hath damage to the value of 20 l. And therefore he prays remedy &c. Pledges to prosecute *J. D.* and *R. R.*

And the said *Thomas Fox* in his proper person comes and defends the force and injury when, &c. And says, that the declaration

ration aforesaid, and the matter in the same contained, are not sufficient in law for the said *Cornelius* to maintain his action aforesaid against the said *Thomas* had, and that he the said *Thomas Fox* to that declaration in manner and form aforesaid made hath no necessity, nor is by the law of the land obliged in any manner to answer; And this he is ready to verify: Wherefore for want of a sufficient declaration the same *Thomas* prays judgment, and that the said *Cornelius* may be precluded from his action aforesaid against the said *Thomas* had, &c.

And the said *Cornelius*, for that he hath above declared sufficient matter in law in his declaration aforesaid to maintain his action against the said *Thomas* had, which he is ready to verify, which said matter the said *Thomas* doth not deny, nor any way answer to it, but doth wholly refuse to admit that averment, as before, prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c. And because the justices here will advise themselves of and upon the premises before they give judgment thereon, day is given to the parties aforesaid here until *Wednesday* next after fifteen days of *Easter* to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here comes as well the said *Cornelius* by his attorney aforesaid, as the said *Thomas* in his proper person; and hereupon the premises being seen, and by the justices here more fully understood, it seems to the same justices here, that the declaration and the matter in the same contained are sufficient in law for the said *Cornelius* to maintain his action aforesaid against the said *Thomas* had, as the said *Cornelius* hath above alleged: Therefore it is considered, that the said *Cornelius* recover against the said *Thomas* his debt aforesaid, and his damages by reason of the detention of that debt to 100s. to the same *Cornelius* with his assent by the court here adjudged: And the said *Thomas* in mercy, &c.

[158]
Joinder in demurrer.
Salk. 753.

Judgment for the plaintiff.

Ashton and Sherman.

Hill. 8 W. 3. Roll 698.

London, to wit. *N*icholas Ashton complains of John Sherman, gent. and Mary his wife, administratrix of all and singular the goods and chattels, rights and credits which belonged to *William Field* lately deceased, who as it is said died intestate, otherwise lately called *William Field* citizen and merchant-taylor of London, being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, in a plea that they render to him 30*l.* of lawful money of England which they unjustly detain from him, for this, to wit, that whereas the said *William Field* in his life-time, to wit, on the 29th day of *September* in the year of the Lord 1694, at London aforesaid, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, by his certain bill obligatory sealed with the seal

Declaration against husband and wife administratrix on a bill penal payable at several times.

seal of the said *William* in his life-time, and to the court of the said lord the now king here shewn, the date whereof is the same day and year, acknowledged himself to be indebted to the same *Nicholas* in the sum of 15*l.* 10*s.* 6*d.* of lawful money of *England*, to be paid to the same *Nicholas*, his executors, administrators or assigns in manner following, to wit, the sum of 5*l.* part thereof on the 29th day of *October* then next following the date of the bill obligatory aforesaid, and the sum of 5*l.* other part thereof on the 29th day of *November* then next ensuing, and the sum of 5*l.* 10*s.* 6*d.* the residue in full thereof on the 24th day of *December* then next following the date of the bill obligatory aforesaid; and for the true payment thereof the said *William Field* bound himself, his heirs, executors and administrators, in the said sum of 30*l.* firmly by the said bill: And the said *Nicholas* in fact says, that the said *William Field* in his life-time, or the said *John* and *Mary* after the death of the said *William*, did not pay, nor did either of them pay, to the said *Nicholas* on the said 29th day of *October* in the bill aforesaid above specified, the said sum of 5*l.* which they ought to have paid to him on the same day, according to the form and effect of the bill obligatory aforesaid; whereby an action accrued to the said *Nicholas* to demand and have of the said *William* in his life-time, and of the said *John* and *Mary* after the death of the said *William*, the said 30*l.* Nevertheless the said *William*, although often required, &c. have not yet paid, nor hath either of them paid the said 30*l.* to the same *Nicholas*, but the said *John* and *Mary* do yet refuse to pay the said *Nicholas*, and unjustly detain the same, to the damage of the said *Nicholas* 20*l.* And therefore he produces the suit, &c.

The defendants
plead a judgment
against the in-
testate on a
Mutatus in
C. B.

And the said *John* and *Mary*, &c. and say that the said *Nicholas* ought not to have or maintain his action aforesaid thereof against them, because they say, that the said *W. F.* in his life-time, to wit, on the first day of *June* in the fifth year of the reign of the lord the now king and of the lady *Mary* the late queen at *London*, to wit, in the parish and ward aforesaid, borrowed of one *Robert Waring*, gent. 100*l.* to be paid to the said *Robert* when he should be thereto required; wherefore the said *Robert* for the recovery of his debt aforesaid, to wit, in *Michaelmas* term in the fifth year of the reign of the said lord the king and of the lady the late queen above said, in the court of the said lord the king and of the lady the late queen of the bench, at *Westminster* in the county of *Middlesex*, impleaded the said *W. F.* in his life-time in a plea of debt for the said 100*l.* in which said plea it was in such manner proceeded in the same court of the said lord the now king and of the lady the late queen of the bench, that the said *Robert* in the said *Michaelmas* term in the 5th year above said by the judgment of the same court recovered against the said *W. F.* in his life-time as well the said debt of 100*l.* as 30*s.* for his damages which he had by reason of the detention of that debt, to the same *Robert* with his assent by the

the said court of the lord the now king and the said late lady the queen of the bench adjudged, as by the record and proceedings thereof remaining in the court of the lord the now king at *Westminster* aforesaid more fully is manifest and appears: And the said *John* and *Mary* farther say, that the said *W. F.* in his lifetime, to wit, on the 20th day of *March* in the 4th year of the reign of the said lord the now king and of the lady *Mary* the late queen of *England*, at *London* aforesaid in the parish and ward aforesaid, by his certain writing obligatory acknowledged himself to be bound to one *Gilbert East* in 100 *l.* to be paid to the same *Gilbert* when he should be thereunto required, and that after the death of the said *W. F.* the said debt of 100 *l.* not being paid or satisfied, the said *G.* for the recovery of his debt aforesaid after the death of the said *W. F.* to wit, in *Michaelmas* term in the 6th year of the reign of the said lord the now king and of the lady *Mary* the late queen, in the said court of the said lord the now king and of the lady the late queen of the bench at *Westminster* aforesaid, impleaded them the said *J.* and *M.* as administratrix of the goods and chattels of the said *W. F.* in a plea of debt for the said 100 *l.* of and upon the writing obligatory aforesaid, in which said plea it was in such manner proceeded, that the said *G.* in the same *Michaelmas* term in the 6th year above said, by the judgment of the said court of the said lord the now king and of the lady *Mary* the late queen, did recover against the said *J.* and *M.* the said debt of 100 *l.* and his damages by reason of the detention of that debt to 40 *s.* to the same *G.* with his assent by the said court adjudged, to be levied on the goods and chattels which were of the said *W. F.* at the time of his death in the hands of the said *J.* and *M.* to be administrated, if they had so much thereof in their hands to be administrated; and if they had not so much in their hands to be administrated, then the damages aforesaid to be levied on the proper goods and chattels of them the said *J.* and *M.* as by the record and proceedings in the said court of the lord the now king of the bench at *Westminster* remaining more fully is manifest and appears: And the said *J.* and *M.* farther say, that they have fully administrated all the goods and chattels which belonged to the said *W. F.* at the time of his death in their hands to be administrated, and that they have not, nor had on the day of the exhibition of the bill of the said *N.* or ever after, any goods or chattels which belonged to the said *W. F.* at the time of his death in their hands to be administrated, except goods and chattels to the value of 10 *l.* which are not sufficient to satisfy the several judgments in form aforesaid given, and which to the execution and satisfaction thereof are bound and charged; with this, that the same *J.* and *M.* will verify, that the said several debts in the said several judgments as aforesaid recovered were and yet are true and just debts and not paid, and that the several judgments aforesaid are in their full force and strength, not reversed, annulled or satisfied; and that the said *W. F.* and the same *J.* and *M.* in their several judgments aforesaid respectively named, and the said *W. F.* and the same

Judgment against them on a bond given by the intestate.

Fully administrated except 10 *l.*

Averments.

same *J.* and *M.* in the bill of the said *N.* named, are the same persons, and not other nor divers: And this they are ready to verify: Wherefore they pray judgment if the said *N.* ought to have or maintain his action aforesaid thereof against them, &c.

N. Hooper.

Repl. as to one judgment, that there was but 30*l.* due which they had paid, and keep the judgment on foot by fraud.

The like replication to the other judgment.

[160]

And that they have assets sufficient, &c.

And the said *Nicholas* says, that he by any thing by the said *J.* and *M.* his wife above in pleading alledged ought not to be precluded from his action aforesaid thereof against them had, because as to the said judgment against the said *J.* and *M.* by the said *G. E.* as aforesaid obtained, in the plea aforesaid mentioned, the same *N.* says that 30*l.* only and no more of the money aforesaid by the said *G. E.* against the same *J.* and *M.* in form aforesaid recovered were justly and really due, and that after the rendring of the said judgment, to wit, on the 1st day of *March* in the 7th year of the reign of the said lord the now king, at the parish and ward aforesaid, the said *J.* and *M.* paid to the same *G. E.* the said 30*l.* in full satisfaction and discharge of that judgment; and the same *G.* the same 30*l.* of the said *J.* and *M.* in full satisfaction and discharge of that judgment and of the whole money thereby recovered, then and there received and accepted: Nevertheless the said *J.* and *M.* have hitherto permitted the judgment by the said *G.* so as aforesaid obtained against them to be and remain in its full force and strength fraudulently and deceitfully, and with an intent to defraud and deceive him the said *N.* of his debt aforesaid, to wit, at the parish and ward aforesaid: And this he is ready to verify: Wherefore he prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c. And as to the judgment aforesaid by the said *Robert Waring* against the said *W. F.* as aforesaid obtained, in the plea aforesaid above mentioned, the same *N.* says, that 28*l.* only and no more of the money aforesaid by the said *R. W.* against the said *W. F.* in form aforesaid recovered were justly and really due to the same *R.* at the time of the rendring of that judgment, and that from the time of the rendring of that judgment hitherto the said *R. W.* was always ready and yet is ready to receive and accept of the same *J.* and *M.* the said 28*l.* in full satisfaction and discharge of the judgment last mentioned and of the whole money thereby recovered, to wit, at the parish and ward aforesaid: Nevertheless the said *J.* and *M.* the payment of the same 28*l.* to the same *R. W.* hitherto deceitfully have deferred, and have suffered the judgment last mentioned to be and remain in its full force and strength, with an intent to defraud and deceive the same *N.* of his debt aforesaid, to wit, at the parish and ward aforesaid: And this he is ready to verify: Wherefore he prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c. And the said *Nicholas* farther says, that the said *J.* and *M.* on the day of the exhibition of the bill

of

of the said *N.* had divers goods and chattels which belonged to the said *W. F.* at the time of his death in their hands to be administered to the value of the debt of the said *N.* above demanded, besides goods and chattels sufficient to satisfy the said *G. E.* his debt and damages aforesaid against the said *J. S.* and *M.* his wife, as aforesaid recovered, and also the 28 *l.* to the said *R. W.* as aforesaid due, wherewith they might satisfy the same *N.* his debt aforesaid, to wit, at the parish and ward aforesaid: And this he prays may be inquired of by the country, &c.

And the said *J.* and *M.* say, that the plea aforesaid by the said *N.* in manner and form aforesaid above in replying pleaded, and the matter in the same contained, are not sufficient in law for the said *N.* to maintain his action aforesaid thereof against the said *J.* and *M.* had, and that they to that plea in manner and form aforesaid pleaded have no necessity, nor are by the law of the land obliged, in any manner to answer: And this they are ready to verify: Wherefore for want of a sufficient replication of the said *N.* in this behalf the same *J.* and *M.* pray judgment, and that the said *N.* may be precluded from his action aforesaid thereof against them the said *J.* and *M.* had, &c. And for causes of demurrer in law, according to the form of the statute in such case made and provided, the same *J.* and *M.* do set down and to the court here express the causes following, to wit, Because the replication aforesaid is double, and because there are several conclusions, and the said *N.* prays judgment twice where he ought only to have prayed judgment once, and because the said *N.* hath concluded ill to the country, where he ought not.

Demurrers

The causes.
27 El. c. 5.
4 A. c. 16.

Edw. Northey.

Nic. Hooper.

And the said *N.* says, that the plea aforesaid by the said *N.* in manner and form aforesaid above in replying pleaded, and the matter in the same contained, are good and sufficient in law for the said *N.* to maintain his action aforesaid thereof against the said *J.* and *M.* had; which said plea, and the matter in the same contained, he the same *N.* is ready to verify and prove, as the court, &c. And because the said *J.* and *M.* do not answer to that plea, nor hitherto in any wise deny it, he the said *N.* as before prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c. But because the court of the Lord the now king here are not yet advised to give their judgment of and upon the premisses, a day is therefore given to the parties aforesaid before the lord the king at *Westminster* until day next after to hear their judgment of and upon those premisses, because the court of the lord the king now here thereof not yet, &c.

Joinder.

Hackett

Hackett against Tilly.

Replication.
On recovery against the warden of the Fleet in debt for an escape, which was affirmed on a writ of error.

[161]

The bill exhibited against the warden.

The recovery against the prisoner in the king's bench.

AND the said *Andrew Hackett* says, that he by any thing by the said *John* above in pleading alledged ought not to be precluded from his action aforesaid thereof against him the said *John* had, because he says; that the said *Thomas Fox* in his lifetime, to wit, at the time of the making of the writing obligatory aforesaid, as also on the first day of *April* in the 7th year of the reign of the lord *William* the third; late king of *England*, &c. and before, was warden of the prison of the said late king of the *Fleet*, to wit, at *London* aforesaid in the parish of *St. Mary-le-bow* in the ward of *Cheape*: And the said *John Tilly* for all the time above said, to wit, on and before the said first day of *April*, as also at the time of the making of the writing obligatory aforesaid, was a servant having and exercising the care and custody of the said prison, and of the prisoners thereto committed under the said *Thomas Fox*, to wit, at the parish and ward aforesaid; and that while the said *Thomas* was so warden of the said prison; and the said *John* had and exercised the care and custody of the said prison and of the prisoners thereto committed as aforesaid, and lately before the making of the said writing obligatory, to wit, the same first day of *April* before mentioned, at the parish and ward aforesaid, one *Francis Hynde*, gent. was a prisoner in the said prison of the *Fleet* in execution at the suit of one *Andrew Hackett*, knt. for a certain debt of 1000 *l.* and 46 *s.* for damages, and out of the said prison, without the licence and against the will of the said *Thomas Fox*, and with the licence and permission of the said *John Tilly*, did go and make an escape, the same *Andrew* being then not satisfied his debt and damages aforesaid, whereof the said *John* at and before the time of the making of the same writing had notice, to wit, at *London* aforesaid in the parish and ward aforesaid; and the said *Thomas* being so as aforesaid warden of the said prison, the same *Andrew Hackett*, knt. before the making of the writing obligatory aforesaid, to wit, on the 12th day of *April* in *Easter* term in the 7th year of the reign of the said late king, came into the court of the same late king before *George Treby*, knt. and his companions, justices of the said late king of the bench at *Westminster*, by *Henry Clift* then his attorney, and then exhibited to the same justices his certain bill against the said *Thomas Fox*, warden of the prison of the said late king of the *Fleet*, then present in the same court in his proper person, in a plea of debt, by which said bill the same *Andrew* then complained, that the said *Thomas* unjustly detained and did not render to the same *Andrew* 1002 *l.* 6 *s.* which he owed him, for this, to wit, that whereas the same *Andrew* otherwise, to wit, in *Easter* term in the 5th year of the reign of the said late king and the lady *Mary* the late queen, in the court of the said late king and queen before the late king and queen themselves, the same court then being at *Westminster*

Westminster in the county of *Middlesex*, by bill, without the writ of the same late king and queen, and by the judgment of the same court had recovered against the said *Francis Hynde*, gent. as well a certain debt of 1000*l.* as 46*s.* which were adjudged to the same *Andrew* in the said court for his damages which he had sustained as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said *Francis* was convicted; and the same *Francis Hynde* afterwards, to wit, on *Monday* next after the morrow of the ascension of the Lord in the 6th year of the reign of the said late king and queen, being then present in his proper person in the same court of the said late king and queen before the said late king and queen themselves, at *Westminster* in the county of *Middlesex* aforesaid, at the petition of the said *Andrew* was by the same court of the said late king and queen before the late king and queen themselves there committed to the custody of the marshal of the *Marshalsey* of the said late king and queen before the late king and queen themselves in execution for the debt and damages aforesaid, at the suit of the said *Andrew*, there to remain until, &c. as by the record and proceedings as well of the judgment aforesaid, as of the said commitment in execution in the said court of the said late king before the said late king himself at *Westminster* aforesaid remaining, more fully did appear: By virtue of which said commitment the said marshal of the *Marshalsey* aforesaid the same *Francis* into his custody then and there had received, and him in execution for the debt and damages aforesaid had and detained; and the said *Francis* so being in the custody of the marshal of the *Marshalsey* aforesaid in execution for the debt and damages aforesaid in form aforesaid, afterwards, to wit, on the 24th day of *May* in the 6th year above said, the said *Francis* came in his proper person under the custody of the said marshal of the *Marshalsey* aforesaid, before *John Powell*, knt. then one of the justices of the said late king and queen of the bench, at his chambers situate in *Chancery-lane*, *London*, being brought by virtue of a writ of *Habeas corpus* issuing out of the court of the said late king and queen of the bench at *Westminster* directed to the said marshal; and the same marshal, to wit, *William Briggs*, then returned to the same justice (among other things) that the said *Francis Hynde* was charged in execution at the suit of the said *Andrew* for the said 1000*l.* debt and 46*s.* for damages so as aforesaid recovered, the body of which said *Francis* he then and there had ready before the said justice according to the tenor of the writ aforesaid, upon which the said *Francis Hynde* was then and there committed by the same justice to the said prison of the said late king and queen of the *Fleet* in execution for the debt and damages aforesaid (among other things,) there to remain until, &c. which said commitment the same justice afterwards, to wit, on the 8th day of *June* in *Trinity* term in the 6th year above said, delivered with his own proper hands into the same court of the bench to be inrolled on

The commitment to the marshal in execution.

Habeas corpus.

Turned over to the warden of the *Fleet*,

who permitted
him to escape;

[162]

whereby action
accrued.

Remedy prayed.

Pledges.

Judgment for
the plaintiff.

on record, and the same commitment is in the said court inrolled on record, as by the record of the said writ and the return thereof, and the commitment in execution last mentioned in the same court of the bench aforesaid at *Westminster* aforesaid remaining, did more fully and manifestly then appear: By virtue of which said commitment the said *Thomas Fox* being warden of the said prison of the *Fleet* aforesaid, on the 24th day of *May* in the 6th year aforesaid, the said *Francis Hinde* into his custody then and there, to wit, before the said justice at his chambers aforesaid situate in *Serjeants Inn* aforesaid, had taken; and the said *Francis Hinde* immediately unto and into the said prison of the *Fleet* then being at *London*, to wit, in the parish of *St. Bridget*, otherwise *Brides*, in the ward of *Farringdon Without*, had carried and put; and the same *Francis* in that prison in execution for the debt and damages aforesaid then and there had had and detained; and the said *Francis* being so detained in the custody of the said *Thomas* as aforesaid in execution for the debt and damages aforesaid in form aforesaid, the said *Thomas* afterwards, to wit, on the 1st day of *April* in the 7th year of the reign of the said late lord king *William* the third, being then as aforesaid warden of the said prison of the said lord the king of the *Fleet*; freely and voluntarily permitted the said *Francis Hinde* out of that prison and out of his custody to escape and go at large where he would; to wit, at *London* aforesaid in the parish and ward aforesaid, the same *Andrew* being then not satisfied the debt and damages aforesaid or any parcel thereof; whereby an action had accrued to the same *Andrew* to demand and have of the said *Thomas* the said 1002l. 6s. Nevertheless the said *Thomas*, although he had been often required, had not then before rendered the said 1002l. 6s. to the said *Andrew*, but had then altogether denied, and did then deny to render him the same; whereby the same *Andrew* then said that he had been prejudiced, and had damage to the value of 500l. And therefore he then prayed remedy, &c. with this, that the same *Andrew* would then verifiy, that the judgment aforesaid did then remain in its full force and vigour, not revoked, reversed, annulled, vacated or satisfied, &c. and did then find pledges to prosecute, to wit, *John Doe* and *Richard Rowe*: Upon which said bill first mentioned in the same court of the said late king before the said justices of the said late king of the bench at *Westminster*, it was in such manner proceeded, that afterwards, to wit, in the same *Easter* term in the 7th year of the reign of the said late king aforesaid, the said *Andrew Hackett* did by the consideration of the same court recover against the said *Thomas Fox* the said debt of 1002l. 6s. and his damages by reason of the detention of that debt to 80s. by the same court of the said late king to the same *Andrew* adjudged: And that the said *Thomas* should be in mercy, &c. And the same *Andrew* farther says, that after the judgment aforesaid in form aforesaid given, and after the making of the writing obligatory aforesaid, to wit, on the 24th day of *May* in the 7th year of the reign of the

the said late king, the said *Thomas Fox* by the advice and at the request of the said *John Tilly*, for the reversal of the judgment aforesaid, prosecuted out of the court of chancery of the said late king, the same court being then here at *Westminster* in the county of *Middlesex*, a certain writ of the said late king to correct error in the record and proceedings and in the rendring of that judgment, directed to *George Treby*, knt. then chief justice of the said late king of the bench, by which said writ the said late king commanded his said chief justice, that if judgment was thereon given then he should distinctly and openly send the record and proceedings of the plea aforesaid with all things touching the same to the said late king under his seal, and that writ, so that the said late king might have them from the day of the Holy Trinity in three weeks then next following wherever he should then be in *England*, that the record and proceedings aforesaid being inspected, he might farther cause to be done therein to correct that error what of right and according to the law and custom of his kingdom of *England* was to be done: By virtue of which said writ of error afterwards, to wit, on the day of the return of the writ aforesaid, the record and proceedings of the plea aforesaid with all things touching the same, into the court of the said late king before the late king himself, the same court then being at *Westminster* in the county of *Middlesex* aforesaid, were duly sent and removed: Whereupon it was in such manner proceeded upon the said writ of error in the said court of the said late king before the said late king himself, that afterwards, to wit, in *Easter* term in the 8th year of the reign of the said late king, it was considered by the same court of the said late king before the said late king himself, that the judgment aforesaid should stand in its full force and effect, and that the judgment aforesaid should be in all things affirmed, as by the record and proceedings of the judgment aforesaid in the court of the said lady the now queen before the queen herself at *Westminster* aforesaid remaining more fully appears; which said judgments do yet remain in their full force and effect, not reversed, annulled or satisfied: And the same *Andrew* farther says, that the said *Thomas* in his life-time, to wit, within the space of two years next after the date of the writing obligatory aforesaid, and a little while after the making of the same, to wit, on the 21st day of *May* in the year of the Lord 1695 aforesaid, at *London* aforesaid in the parish of *St. Mary-le-Bow* in the ward of *Cheape* aforesaid, gave notice to the same *John Tilly* of the said action so as aforesaid prosecuted by the said *Andrew Hackett* against the said *Thomas*, and required the same *John* to keep the said *Thomas* indemnified therefrom: Nevertheless the said *John Tilly*, within the space of two years next ensuing the date of the said writing obligatory, or at any time after in the life-time of the said *Thomas*, hath not saved harmless nor kept indemnified him the said *Thomas Fox* from the said action so as aforesaid prosecuted against the said *Thomas* by the said *Andrew Hackett*, knt. And this he is ready to verify: Wherefore he

A writ of Error thereon.

Judgment affirmed.

Notice.

Hath not indemnified J. &c.

VOL. I.

T

prays

prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c.

L. Agar.

Tho. Pengelly.

[163]

Prise and his wife against James.

Debt for rent
by an executrix
due in the testa-
tor's time.

Lease.

Premises.

Habendum.

Redendum.

Midd', to wit. **T** *Thomas Arden Prise*, bart. and *Elizabeth* his wife, executrix of the last will and testament of *John Denham*, knight of the *Bath*, her late father deceased, complain of *John James*, knt. otherwise lately called *John James* of *Scotland-yard* in the county of *Middlesex*, esq; in the custody of the marshal, &c. in a plea that he render to them 30*l.* of lawful money of *England* which he unjustly detains from them, for this, to wit, that whereas the said *John Denham* in his lifetime, to wit, on the 12th day of *November* in the 19th year of the reign of the lord *Charles* the second, now king of *England*, &c. at the parish of *St. Martin in the fields* in the county of *Middlesex* aforesaid, by his certain indenture made between him the said *John Denham*, by the name of the honourable *John Denham*, knight of the *Bath*, of the one part, and the said *John James* aforesaid, by the name of *John James* of *Scotland-yard* in the county of *Middlesex*, esq; of the other part, which other part sealed with the seal of the said *John James* the same *Thomas* and *Elizabeth* here in court produce, the date whereof is the same day and year aforesaid, had demised, granted and to farm let unto the said *John James* all those chambers, cellars, closets, kitchen, coal-house, coach-house, acre or piece of land, and other rooms of the said *John Denham* then in the occupation of the said *John James*, and situate and being in *Scotland-yard* aforesaid near *Whitehall* in the parish of *St. Martin in the fields* aforesaid in the county of *Middlesex* aforesaid, with all ways, passages, lights, easements and appurtenances to the said premises belonging; To have and to hold the said demised premises with the appurtenances to the said *John James*, his executors, administrators and assigns, from the feast-day of *St. Michael* the archangel then last past unto the full end and term of 30 years from thence next ensuing and fully to be compleat and ended; Yielding and paying therefore during the two first years and three quarters of a year of the said term of 30 years to the said *John Denham*, his executors, administrators and assigns, the yearly rent of a pepper-corn at the feast of *St. Michael* the archangel, if the same should be legally demanded; And also yielding and paying to the said *John Denham*, his executors, administrators or assigns, during all the residue of the said term of 30 years, the yearly rent of 60*l.* of lawful money of *England* on the feast of *St. Michael* the archangel, the birth of our Lord God, the annunciation of the blessed virgin *Mary*, and the nativity of *St. John* the baptist, as

by the said indenture among other things more fully appears: By virtue of which said demise the same *John James* afterwards, to wit, on the first day of *January* in the 19th year above said into the premises afore said with the appurtenances entred, and was and yet is thereof possessed; and the said *John Denham* afterwards, to wit, on the 13th day of *March* in the year of the Lord 1668, in the parish of *St. Martin in the fields* afore said in the county of *Middlesex* afore said; made his last will and testament in writing, and by the same constituted and ordained the said *Elizabeth* sole executrix thereof, and afterwards, to wit, on the first day of *May* in the year of the Lord 1670, at the parish of *St. Martin in the fields* afore said in the county of *Middlesex* afore said died, after the death of which said said *John Denham* she the said *Elizabeth* took upon herself the burden of the execution of the said will, and afterwards, to wit, on the 9th day of *May* in the year of the Lord last above said, at the parish of *St. Martin in the fields* afore said in the county of *Middlesex* afore said, the same will in due form of law proved; and afterwards, to wit, on the first day of *May* in the 29th year of the reign of the said lord the now king, at the parish of *St. Martin in the fields* afore said in the county of *Middlesex* afore said, took to husband the said *Thomas*, and 30*l.* for the rent of the premises afore said for half a year ended at the feast of the nativity of *St. John* the baptist last past, to the same *Thomas* and *Elizabeth* after the death of the said *John Denham*, and after the espousals between the same *Thomas* and *Elizabeth* celebrated, were in arrear, and yet are in arrear and unpaid; whereby an action accrued to the same *Thomas* and *Elizabeth* to demand and have of the said *John James* the said 30*l.* Nevertheless the said *John James*, altho' often required, &c. the said 30*l.* to the same *Thomas* and *Elizabeth*, or either of them, hath not yet paid, but hath altogether denied, and yet doth deny to pay them, and unjustly detains the same, to the damage of the said *Thomas* and *Elizabeth* 60*l.* And therefore they produce the suit, &c. And the same *Thomas Arden Prije* and *Elizabeth* produce here in court the letters testamentary of the said *John Denham*, whereby it sufficiently appears to the court here that she the said *Elizabeth* is executrix of the will afore said, &c.

The defendant entred.

The lessor made his will and plaintiff *Elizabeth* executrix.

The marriage of the executrix.

Breach.

Smith against Povey.

[164]

AND the said *Josias* by *Gabriel Leach* his attorney comes and defends the force and injury when, &c. And says, that the said *John* ought not to have or maintain his action afore said thereof against him, because as to the said 13*l.* in the declaration afore said first mentioned, part of the said 26*l.* and as to 8*l.* 15*s.* 9*d.* of the said 13*l.* in the said declaration second mentioned, the remaining part of the said 26*l.* the same *Josias* says that he doth not owe to the said *John Smith* the same 13*l.* or the same 8*l.* 15*s.* 9*d.* or any penny thereof: And of this the same

Plea.

To part. not indebted.
Pract. Reg.
562.

To the residue,
tender.
5 Co. 114.

Salk. 622,
624.

Josias puts himself on the country: And the said *John* thereof likewise: And as to 4*l.* 4*s.* 3*d.* residue of the said 13*l.* in the declaration aforesaid second mentioned (the same 13*l.* last specified being the said remaining part of the said 26*l.* and being the said rent for the said demised premises in that declaration second specified) the same *Josias* says, that well and true it is that the said 4*l.* 4*s.* 3*d.* of the rent aforesaid, upon the demise aforesaid in the declaration aforesaid second mentioned, at the feast of the birth of our Lord Christ in the year of the Lord 1701 aforesaid were in arrear, and yet are in arrear: But the same *Josias* farther says, that he the same *Josias* on the said feast of the birth of our Lord Christ in the year of the Lord 1701 aforesaid, for the space of half an hour next before and until the setting of the sun of the same feast at the said other house in the declaration aforesaid mentioned was ready, and then and there offered to pay to the said *John* the said 4*l.* 4*s.* 3*d.* which he ought to have paid to the said *John* on that feast, according to the form and effect of the covenant aforesaid in that behalf in the declaration aforesaid mentioned; and that the said *John*, nor any other on the behalf of the said *John* lawfully authorized, was not then and there ready to receive of the same *Josias* the said 4*l.* 4*s.* 3*d.* And that the same *Josias* on the same feast-day, and alway after the said feast of the birth of our Lord Christ in the year 1701 aforesaid hitherto was ready, and yet is ready to pay to the said *John* the said 4*l.* 4*s.* 3*d.* and the same here into court brings ready to be paid to the said *John*, if he the said *John* will accept the same; which all and singular the same *Josias* is ready to verify, &c. Wherefore he prays judgment if the said *John* for damages against the said *Josias* ought to proceed, &c.

R. Acherley.

Birkhead against Rowe.

Debt on bond
by an executor.

London, to wit. *John Birkhead*, gent. executor of the last will and testament of *Dorothy Birkhead*, widow deceased, complains of *Anthony Rowe*, esq; otherwise called *Anthony Roe* of the parish of St. Martin in the fields in the county aforesaid, esq; in the custody of the marshal, &c. in a plea that he render to him 1400*l.* of lawful money of England which he unjustly detains from him, for this, to wit, that whereas the said *Anthony* on the 28th day of May in the 35th year of the reign of the lord *Charles* the second, late king of England, &c. at London aforesaid, to wit, in the parish of St. Mary-le-bow in the ward of Cheape, by his certain writing obligatory sealed with the seal of the said *Anthony*, and to the court of the now lord the king here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *Dorothy* in her life-time in the said 1400*l.* to be paid to the same *Dorothy* when he should be thereto after required:
never-

nevertheless the said *Anthony* the same 1400*l.* altho' often required, &c. to the said *Dorothy* in her life-time, or to the said *John* after the death of the said *Dorothy*, or to either of them, hath not yet paid, but the said *Anthony* the same 1400*l.* to the same *Dorothy* in her life-time, and to the said *John* after the death of the said *Dorothy*, hath hitherto altogether denied to pay, and the same to the said *John* doth yet deny to pay, to the damage of the said *John* 20*l.* And therefore he produces the suit, &c. And the same *John* produces here in court the letters testamentary of the said *Dorothy*, whereby it sufficiently appears to the court here that the said *John* is executor of the will of the said *Dorothy* aforesaid, and thereof hath the administration, &c.

Moore against Rowe.

London, to wit, *Robert Moore*, esq; administrator of the goods and chattels, rights and credits, which belonged to *Anne Browne*, otherwise *Newton* deceased, at the time of her death, who died intestate, complains of *Anthony Rowe* of the parish of *St. Martin in the fields*, otherwise called, &c. in the custody of the marshal, &c. in a plea that he render to him 1000*l.* of lawful money of *England* which he unjustly detains from him, for this, to wit, that whereas the said *Anthony* on the 27th day of *November* in the 34th year of the reign of the lord *Charles* the second, late king of *England*, &c. at *London* aforesaid, to wit, in the parish of *St. Sepulchre* in the ward of *Farringdon without*, by his certain writing obligatory sealed with the seal of the said *Anthony*, and to the court of the lord the now king here shewn, the date whereof is the day and year abovesaid, acknowledged himself to be held and firmly bound to the said *Anne*, by the name of *Anne Newton* of *London*, widow, in the said 1000*l.* to be paid to the said *Anne* when he should be thereto after required: nevertheless the said *Anthony*, altho' often required, &c. the said 1000*l.* to the said *Anne* in her life-time, or to the same *Robert* after the death of the said *Anne*, (to which said *Robert* administration of the goods and chattels, rights and credits, which belonged to the same *Anne* at the time of her death, after the death of the said *Anne*, to wit, on the last day of *January* in the year of the Lord 1695, by *Thomas* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England*, to whom the commission of that administration did of right belong, was duly committed), or to either of them, hath not yet paid, but the said *Anthony* the same 1000*l.* to the said *Anne* in her life-time, and to the same *Robert* after the death of the said *Anne*, hath hitherto altogether denied to pay, and the said *Anthony* doth yet deny to pay them to the same *Robert*, to the damage of the said *Robert* 100*l.* And therefore he produces the suit, &c. And the same *Robert* produces here in court the letters of administration aforesaid, which the commission of the administration aforesaid in form aforesaid testify, &c.

Debt on bond
brought by an
administrator.

[165]

Clarke against Atton.

Debt on bond
against an execu-
tor by the surviv-
ing obligee.

Midd', to wit. *John Clarke* complains of *William Atton* a ser-
vant to *William Briggs*, esq; being in the
custody of the marshal of the *Marshalsey* of the court of the lord
the king before the king himself, executor of the last will and
testament of *William Atton* his late father deceased, otherwise
called *William Atton* of the town of *Buckingham* in the county
of *Bucks*, draper, in a plea that he render to him 600*l.* of lawful
money of *England* which he unjustly detains from him, for this,
to wit, that whereas the said *William Atton* the testator in his
life-time, to wit, on the 12th day of *November* in the 27th
year of the reign of the lord *Charles* the second, late
king of *England*, &c. at *Westminster* in the county aforesaid,
by his certain writing obligatory sealed with the seal of the said
William Atton the testator in his life-time, and to the court of
the said lord the now king here shewn, the date whereof is the
same day and year, acknowledged himself to be held and firmly
bound to the same *John Clarke*, and one *John Wilson*, gent.
now deceased, in the said 600*l.* to be paid to the same *John
Clarke* and *John Wilson* when he should be thereto after required :
Nevertheless the said *William Atton* the testator in his life-time,
and the said *William Atton* the now defendant, after the death of
the said *William Atton* the testator, altho' often required, &c.
the said 600*l.* to the same *John Clarke* and *John Wilson*, or
either of them, in the life-time of the said *John Wilson*, or to
the same *John Clarke* after the death of the said *John Wilson*,
have not paid, nor hath either of them paid, but have refused
to pay them the same, and the said *William Atton* the executor
doth yet refuse to pay the same to the said *John Clarke*, to the
damage of the said *John Clarke* 40*l.* And therefore he produces
the suit, &c.

Drury and Dayley against Monger.

Debt on bond
by an executor
of an executor
against an admin-
istrator.

London, to wit. *John Drury* and *Timothy Dayley*, executors
of the last will and testament of *Elizabeth
Hickey* deceased, who was executrix of the last will and testament
of *Matthew Hickey* also deceased, complain of *Richard Monger*,
administrator of all and singular the goods and chattels, rights
and credits, which belonged to *Peter Monger* lately deceased,
otherwise called *Peter Monger* of the parish of *St. Buttolph* with-
out *Aldgate* in the county of *Middlesex*, brewer, in the custody
of the marshal, &c. in a plea that he render to them 200*l.* of
lawful money of *Great Britain* which he unjustly detains from
them, &c. for this, to wit, that whereas the said *Peter Monger*
in his life-time, to wit, on the 22d day of *January* in the year,
&c. at, &c. by his certain writing obligatory sealed with the
seal of the said *Peter* in his life-time, and to the court of the said
lord

lord the now king here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *Matthew Hickey* in his life-time in the said 200*l.* to be paid to the said *Matthew*, his executors or assigns, when he should be thereto after required: Nevertheless the said *Peter Monger* in his life-time, or the said *Richard* after the death of the said *Peter*, altho' often required, &c. the said 200*l.* to the said *Matthew* in his life-time, or to the said *Elizabeth* in her life-time after the death of the said *Matthew*, or to the same *John* and *Timothy*, or either of them, after the death of the said *Elizabeth*, have not paid, but have denied to pay the same to them, or either of them, and the said *Richard* doth yet deny to pay to, and unjustly detains the same from, the said *John* and *Timothy*; whereby they say they are prejudiced, and have damage to the value of 20*l.* And therefore they produce the suit, &c. And the same *John* and *Timothy* produce here in court as well the letters testamentary of the said *Matthew* aforesaid, whereby it sufficiently appears to the court here that the said *Elizabeth* was executrix of the will of the said *Matthew* aforesaid, and thereof had the administration, &c. as the letters testamentary of the said *Elizabeth* aforesaid; whereby it sufficiently appears to the court here that they the said *John* and *Timothy* are executors of the will of the said *Elizabeth* aforesaid, and thereof have the administration, &c.

[166]

Lysons against Stapley, widow.

London to wit. *George Lysons*, gent. complains of the lady *Mary Stapley*, widow, executrix of the last will and testament of *John Stapley*, knt. and bart. her late husband deceased, otherwise called *John Stapley of Briell*, in the county of *Sussex*, knt. and bart. being in the custody of the marshal of the *Marshalsey* of the lady the queen before the queen herself, in a plea that she render to him 200*l.* of lawful money of *England* which she unjustly detains from him, for this, to wit, that whereas the said *John* in his life-time, to wit, on the 29th day of *October* in the year of the Lord 1689, at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, by his certain writing obligatory sealed with the seal of the said *John*, and to the court of the said lady the queen here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *George* in the said 200*l.* to be paid to the same *George* when he should be thereto required: Nevertheless the said *John* in his life-time, and the said *Mary* after the death of the said *John*, the said 200*l.* altho' often required, &c. have not, nor hath either of them paid to the said *George*, but have hitherto altogether denied, and the said *Mary* doth yet deny to pay him the same, and unjustly detains them, to the damage of the said *George* 100*l.* And therefore he produces the suit, &c.

Debt on bond
against an exe-
cutrix.

Ilea, Not the deed of the testator.

When, &c. and says, that she ought not to be charged with the debt aforesaid by virtue of the writing aforesaid, because she says, that the writing aforesaid is not the deed of the said *John Stapley*, knt. and bart. And of this she puts herself upon the country, and the said *George* likewise: Therefore let a jury thereon come before the lady the queen at *Westminster* on day next after and who neither, &c. to recognize, &c. The same day is given to the parties aforesaid there, &c.

Terrey and Duvall.

Debt by an administrator *de bonis non* on a bond made by a feme sole to the testator.

Cases in Parl. 15 where in this case more costs were given than the penalty was.

Administration granted by the archbishop of *Canterbury*.

London, to wit. *William Terrey*, administrator of the goods and chattels which belonged to *William Kirwood* by *Anne Terrey*, otherwise *Kirwood* deceased, late executrix of the will of *William Kirwood* unadministred, complains of *John Duvall* and *Elizabeth* his wife, otherwise lately called the most noble *Elizabeth* viscountess *Purbeck Deffring* in the county of *Norfolk*, widow, in the custody of the marshal, &c. in a plea that they render to him 140*l.* which they unjustly detain from him, for this, to wit, that whereas the said *Elizabeth* while she was sole, to wit, on the 20th day of *October* in the 27th year of the reign of the lord *Charles* the second, late king of *England*, &c. at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, by her certain writing obligatory sealed with the seal of the said *Elizabeth*, and to the court of the lord and lady the now king and queen here shewn, the date whereof is the same day and year acknowledged herself to be held and firmly bound to the same *William Kirwood* in his life-time in the said 140*l.* to be paid to the same *William Kirwood*, his executors, administrators and assigns, when she should be thereto required: Nevertheless the said *Elizabeth* while she was sole, altho' often required, &c. the said 140*l.* to the same *William Kirwood* in his life-time, or to the same *Anne* after the death of the said *William Kirwood*, while she was sole, did not pay; and the said *John* and *Elizabeth*, after the espousals between them celebrated, to the same *Anne* while she was sole, or to the same *Anne* and *William Terrey* after the espousals between them were celebrated, or to the same *William Terrey* after the death of the said *Anne* (to which said *Will. Terrey* administration of all and singular the goods and chattels, which belonged to the said *Will. Kirwood* at the time of his death unadministred by the said *Anne*, by *John* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England*, on the 2d day of the month of *December* in the year of the Lord 1692, at *London* aforesaid in the parish and ward aforesaid was duly committed) have not paid, but the said *Elizabeth* while she was sole them to the same *Will. Kirwood* in his life-time, or to the same *Anne* after the death of the said *Will. Kirwood* while she was sole; and the said *John* and *Elizabeth* after the espousals between them as aforesaid were celebrated,

celebrated, them to the same *Anne* while she was sole, or to the same *Will. Terrey* and *Anne* after the espousals between them likewise as aforesaid were celebrated, have refused to pay, and them to the same *Will. Terrey* after the death of the said *Anne*, and after the commitment of the administration aforesaid in form aforesaid, do yet refuse to pay, and unjustly detain, in delay of the faithful administration aforesaid, and to the damage of the said *William Terrey* 20 l. And therefore he produces the suit, &c. And he produces here in court the letters of administration of the said archbishop, which the commitment of the administration aforesaid in form aforesaid testify, &c.

[167]

Wilkinson and Weale.

Midd', to wit. **E** *Lizabeth Wilkinson*, widow, administratrix of all and singular the goods and chattels, rights and credits which belonged to *Christopher Wilkinson* her late husband deceased, complains of *Samuel Weale*, gent. otherwise called *Samuel Weale* of *Landreth* in the county of *Cornwall*, gent. otherwise called *Samuel Weale* of *St. Dunstan in the West, London*, gent. otherwise called *Samuel Weale* of the parish of *St. Dunstan in the West, London*, gent. in the custody of the marshal, &c. in a plea that he render to her 90 l. of lawful money of *England*, which he unjustly detains from her, for this, to wit, that whereas the said *Samuel* on the 16th day of *December* 1690, at *Westminster* in the county aforesaid, by his certain writing obligatory sealed with the seal of the said *S.* and to the court of the lord the now king here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *C. W.* in his life time in 20 l. parcel of the said 90 l. to be paid to the said *C.* when he should be thereto after required: And whereas also the said *S.* afterwards, to wit, on the 29th day of *September* 1690 above said, at *Westminster* aforesaid in the county aforesaid, by his certain other writing obligatory sealed also with the seal of the said *S.* and to the court of the said lord the now king here likewise shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *C. W.* in his life-time in other 20 l. other part of the said 90 l. to be paid likewise to the said *C.* when he should be thereto after required: And whereas also the said *S.* afterwards, to wit, on the said 29th day of *September* in the year last above said, at *Westminster* aforesaid in the county aforesaid, by his certain other writing obligatory sealed also with the seal of the said *S.* and to the court of the said lord the now king here likewise shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *C. W.* in his life-time in other 20 l. of the said 90 l. other parcel, to be likewise paid to the said *C.* when he should be thereto after required: And whereas also the same *S.* afterwards, to wit, the same day and year last above said, at *Westminster* aforesaid in the county aforesaid,

Debt on several bonds by an administratrix.

foresaid, by his certain other writing obligatory, sealed likewise with the seal of the said *S.* and to the court of the said lord the now king here also shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *C.* in his life-time in other 20 *l.* of the said 90 *l.* other parcel, to be paid likewise to the same *C.* when he should be thereto after required: And whereas also the same *S.* afterwards, to wit, the same day, year and place last abovesaid, by his certain other writing obligatory, sealed also with the seal of the said *S.* and to the court of the said lord the now king here also shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *C.* in his life-time in 10 *l.* residue of the said 90 *l.* to be paid likewise to the said *C.* when he should be thereto after required: Nevertheless the said *S.* altho' often required, &c. the said 90 *l.* to the same *C.* in his life-time, nor to the said *E.* after the death of the said *C.* to which said *E.* administration of all and singular the goods and chattels, rights and credits, which belonged to the said *C.* at the time of his death, by to whom the commission of the administration abovesaid did of right belong, on the day of in the year of the Lord at *Westminster* abovesaid in the county abovesaid was in due form of law committed, hath not paid, but the said *S.* them to the said *C.* in his life time, or to the said *E.* after the death of the said *C.* hath altogether denied to pay, and them to the same *E.* doth yet deny to pay and unjustly detains, to the damage of the said *E.* 40 *l.* And therefore she produces the suit, &c. And she produces here in court the letters of administration abovesaid which the commission of administration abovesaid in form abovesaid testify, the date whereof is the day and year abovesaid, &c.

Pettyward against Kent and another.

Debt on bond
against two
executors.

Midd' to wit *M*ary Pettyward, widow, complains of *John Kent*, esq; and *Nicholas Fenn*, gent. executors of the last will and testament of *Richard Kent*, esq; otherwise called *Richard Kent*, of *London*, esq; in the custody of the marshal, &c. in a plea that they render to her 200 *l.* of lawful money of *England*, which they unjustly detain from her, for this, to wit, that whereas the said *Richard* in his life-time, to wit, on the twelfth day of *October* in the year of the Lord 1686, at *Westminster* in the county of *Middlesex* abovesaid, by his certain writing obligatory, sealed with the seal of the said *Richard* in his life-time, and to the court of the said lord the now king here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *Mary* in the said 200 *l.* to be paid to the same *Mary* when he should be thereto after required: Nevertheless the said *Richard* in his life-time, and the said *John* and *Nicholas*, or either of them after the death of the said *Richard*, altho' often required, &c. the said 200 *l.* to the

the same *Mary* have not yet paid, nor hath either of them paid, but the said *Richard* in his life-time them to the said *Mary* altogether refused to pay, and the said *John* and *Nicholas* after the death of the said *Richard* them to the same *Mary* do yet refuse to pay and unjustly detain, to the damage of the said *Mary* 20*l*. And, therefore she produces the suit, &c.

Nowell against Batchellor.

Midd^e to wit, *William Nowell* complains of *Thomas Batchellor* in the custody of the marshal, &c. in a plea that he render to him 16*l*. of lawful money of *Great Britain* which he owes him and unjustly detains, for this, to wit, that whereas the said *Thomas Batchellor* on the 26th day of *May* in the 12th year of the reign of our lady *Anne*, now queen of *Great Britain*, &c. at *Westminster* in the county aforesaid, was indebted to the same *William* in the said 16*l*. for so much money by the said *Thomas Batchellor* to the use of the said *William Nowell* after the first day of *May* in the year of the Lord 1711 had and received; whereby an action accrued to the said *William Nowell* to demand and have of the said *Thomas Batchellor* the said 16*l*. according to the form of the statute made and provided in a parliament of the said lady the now queen, held at *Westminster* in the county of *Middlesex* on the 25th day of *November* in the year of the Lord 1710, intituled, *An act for the better preventing of excessive and deceitful gaming*: Nevertheless the said *Thomas*, altho' often required, the same 16*l*. to the same *William Nowell* hath not yet paid, but them to him hitherto hath denied, and yet doth deny to pay; whereby he says that he is prejudiced, and hath damage to the value of 20*l*. And therefore he produces the suit, &c.

Debt on the statute for preventing gaming,
9 A. C.

Not indebted pleaded, and the plaintiff recovered a verdict, and the money was paid him thereon.

Curson against Faunt.

Leicester, to wit. *Nathaniel Curson*, bart. complains of *William Faunt*, esq; being in the custody of the marshal of the *Marshalsey* of the lord and lady the king and queen before the king and queen themselves, in a plea that he render to him 280*l*. of lawful money of *England* which he owes him and unjustly detains, for this, to wit, that whereas the said *Nathaniel* on the 24th day of *March* in the fourth year of the reign of the lord *James* the second, late king of *England*, &c. at *Feston* in the county aforesaid, had demised, granted and to farm let, to the said *William* the several closes or parcels of land of him the said *Nathaniel* following, to wit, the *West meadow* at the mill-tail, the *Mills Close*, otherwise *Miles Close*, the *Hall Close*, the *Red Field*, the *Lilly Close*, the *Gate Close*, the *Warren*, the *Furzy*

Debt for rent on a lease.

The premises,

Habendum.

Reddendum.

Entry.

Breach.

Had nothing in the tenements.

3 Lev. 193, 146.

Town. Tab. 149.

2 Ven. 291.

Pract. Reg. 214.

[169]

Repl. that plaintiff's father recovered judgment against G. F. for 2000*l.* in C. B.

Furzy Close, the *Middle Close*, and the *Highway Close*, lying and being in *Feston* aforesaid in the county aforesaid; To have and to hold the several closes and parcels of land aforesaid with the appurtenances to the said *William* and his assigns, from the said 24th day of *March* in the 4th year aforesaid unto the end and term of one whole year from thence next ensuing and fully to be compleat and ended: Yielding and paying therefore to the said *Nathaniel* and his assigns the rent or sum of 280*l.* of lawful money of *England*: By virtue of which said demise the same *William* into the tenements aforesaid with the appurtenances entred, and was thereof possessed, and the same tenements with the appurtenances had held and occupied; and the said 280*l.* for the year aforesaid, ended at the feast of the annunciation of the blessed virgin *Mary* in the first year of the reign of the lord and lady *William* and *Mary*, now king and queen of *England*, &c. were in arrear and are yet unpaid; whereby an action accrued to the same *Nathaniel* to demand and have of the said *William* the said 280*l.* Yet the said *William*, altho' often required, &c. the said 280*l.* to the said *Nathaniel* hath not yet paid, but hath hitherto altogether denied, and yet doth deny to pay him the same, to the damage of the said *Nathaniel* 100*l.* And therefore he produces the suit, &c.

When, &c. and says, that the said *Nathaniel* at the time of the demise aforesaid in the declaration aforesaid mentioned had nothing in the tenements aforesaid whereof he could make the demise aforesaid: And this the same *William* is ready to verify; Wherefore he prays judgment if the said *Nathaniel* ought to have or maintain his action aforesaid against him, &c.

And the said *Nathaniel* says, that he by any thing by the said *William* above in pleading alledged ought not to be precluded from his action aforesaid thereof against him had, because he says that otherwise, to wit, in *Michaelmas* term in the 32d year of the reign of the lord *Charles* the second, late king of *England*, &c. one *John Curson*, knt. and bart. deceased, in his life-time, in the court of the common bench at *Westminster* before *Francis North*, knt. and his companions, then justices of the said late king of the bench aforesaid, at *Westminster* in the county of *Middlesex*, by the consideration of the same court recovered against *George Faunt*, esq; by the name of *George Faunt* of *Feston* in the county of *Leicester*, esq; as well a certain debt of 2000*l.* as 40*s.* which to the same *J. C.* in the same court of the common bench were then adjudged for his damages which he had as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the same *George* is convicted, as by the record and proceedings thereof in the same court of the common bench at *Westminster* aforesaid remaining of record is more fully manifest and appears; which said judgment had and obtained was for a true and just debt to the said *J. C.* from the said *G. F.* due, and being then and yet not paid or satisfied; and the same judgment in form aforesaid had and obtained

obtained doth still remain in its full force and effect, not reversed, annulled or satisfied: And the same *N.* doth farther in fact say, that the said *J. C.* in his life-time, afterwards, to wit, on the 28th day of *November* in that same term, came into the court of the common bench aforesaid at *Westminster* aforesaid, by *John Downes* his attorney, and by the statute in such case made and provided chose to be delivered to him all the goods and chattels of the said *G.* except his oxen and beasts of his plow, and likewise the one-half of his land and tenements, to detain to himself the goods and chattels aforesaid as his own proper goods and chattels, and also to hold the said half as his freehold to himself and his assigns, according to the form of the statute aforesaid, until the debt and damages aforesaid should be thereof levied: And he prayed the writ of the lord *Charles* the second, late king of *England*, &c. to be directed to the sheriff of the county of *Leicester*; and it was granted him, returnable in the same court of the common bench at *Westminster* in the octave of *St. Hillary*, &c. On which day the said *J. C.* came into the same court by his attorney aforesaid: And the sheriff did nothing therein, nor returned the writ: Therefore, as before, another writ was made to him thereof in form aforesaid, returnable in the same court on the morrow of the *Holy Trinity*, &c. On which day the said *J. C.* came into the same court by his attorney aforesaid: And the sheriff, to wit, *Jeremiah Dove*, esq; then returned there a certain inquisition, taken before him at *Billesdon* in the county of *Leicester* aforesaid on the 30th of *May* then last past, by the oath of 12, &c. by which it was found, that the said *G.* on the day of the caption of the inquisition aforesaid was seised in his demean as of fee of and in one close of pasture with the appurtenances in *Feston* in the county of *Leicester* aforesaid, called *Mills Close*, containing by estimation eight acres or thereabouts, then or late in the tenure or occupation of the said *G. F.* or his assigns, of the clear yearly value in all issues beyond reprises of 60*s.* And of and in one other close of pasture with the appurtenances in *Feston* aforesaid in the county of *Leicester* aforesaid, called *Hall Close*, containing by estimation eighteen acres or thereabouts, then or late in the tenure or occupation of the said *G. F.* or his assigns, of the clear yearly value in all issues beyond reprises of 10*l.* And of and in one other close of pasture with the appurtenances in *Feston* aforesaid, in the county aforesaid, called *Redfield*, containing by estimation 14*7* acres, or thereabouts, then or late in the possession of the said *G. F.* or his assigns, of the clear yearly value in all issues beyond reprises of 40*l.* And of and in one other close of pasture with the appurtenances in *Feston* aforesaid in the county aforesaid called *Kilby Close*, containing by estimation 68 acres of land or thereabouts, then or late in the tenure or occupation of the said *G. F.* or his assigns, of the clear yearly value in all issues beyond reprises of 30*l.* (So on reciting all the several particulars): And that the said close called *Mills Close* in *Feston* aforesaid in the county aforesaid,

13 E. 1. c. 18.

Elegit sued out.

Inquisition returned.

G. F. seised in fee of, &c.

The premises delivered are an equal moiety;

and the same
as in the decla-
ration.

[170]

Tenant by *Elegit*
made plaintiff
executor and
died,

who entered.

That the debt is
not paid, and so,
&c.

Rejoinder, that
before the judg-
ment recovered
W. and *B.* reco-
vered a judgment
in the Exchequer
against defend-
ant's ancestor for
600*l.* and sued
out an *Elegit*.

said, the said close called *Halls Close*, the said close called *Redfield*, the said close called *Kilby*, the said close called the *Gate Close*, the said close called the *Warren*, the said close called the *Furzy Close*, the said close called *Middle Close*, the said close called *Highway Close*, the said close called *West Meadow* at the mill-tail, being all in the occupation of the said *G. F.* or his assigns, and lying and being in *Feston* aforesaid in the county of *Leicester* aforesaid, are one just and equal half of the messuages, lands and tenements aforesaid; which said half the said sheriff on the day of the caption of the inquisition aforesaid, by virtue of the writ aforesaid so as aforesaid to him directed, caused to be delivered to the said *J. C.* bart. to hold to him and his assigns as his freehold until his debt and damages aforesaid should be fully levied, as he was by that writ commanded: And the same *N.* farther says, that the several closes and parcels of land last mentioned, to wit, the *Mills Close*, the *Hall Close*, the *Redfield*, *Kilby Close*, the *Gate Close*, the *Warren*, the *Furzy Close*, *Middle Close*, *Highway Close*, the *West Close*, *Highway Close*, the *West Close* at the mill-tail, are the same closes in the declaration aforesaid above-mentioned to be demised to the same *William*, into which said closes with the appurtenances the said *John Curson* in his life-time by virtue of the delivery aforesaid entered, and was thereof seised as of his freehold until, &c. and being so thereof seised the same *J. C.* afterwards, to wit, on the 1st day of *December* 1686, at *Leicester* in the county of *Leicester* aforesaid, made his last will and testament in writing, and by the same constituted and ordained him the said *Nathaniel Curson* executor of his will aforesaid, and afterwards there died so as aforesaid seised; after whose death the same *N.* the will of the said *J.* aforesaid in due form of law proved, and took upon himself the burden of the execution thereof; and the same *N.* into the closes aforesaid last mentioned with the appurtenances entered, and was seised thereof as of his freehold until, &c. and that he had not levied the debt and damages aforesaid nor any part thereof at the time of the demise in the declaration aforesaid above-mentioned, nor ever after hath levied: And so the same *N.* says that he, at the time of the demise in the declaration aforesaid above-mentioned, had a good and sufficient estate in the tenements aforesaid with the appurtenances, whereof he might make the demise aforesaid of the tenements aforesaid with the appurtenances aforesaid to the same *W.* And this he is ready to verify: Wherefore he prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c.

And the said *W.* says, that long before the recovery of the judgment aforesaid by him the said *J. C.* against him the said *George Faunt* in the replication of the said *N.* mentioned, to wit, in *Trinity* term in the 26th year of the reign of the lord *Charles* the second, late king of *England*, &c. *Wil. Boothby*, esq; and *Walter Ruding*, esq; then debtors of the said lord *Charles* the second, then king of *England*, came into the court of the then said lord king

Charles

Charles the second of his exchequer at *Westminster* before the barons of the same exchequer on the 8th day of *July* in the same term by *Thomas Haynes* their then attorney, and then complained by bill against the said *G. F.* by the name of *G. F.* esq; present then in court the same day, in a plea that he should render them 6000*l.* which he owed them and unjustly detained, for this, to wit, that whereas the said *G. F.* on the last day of *May* in the 26th year of the reign of the said lord the late king, at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, had borrowed of the said *Wil. Boothby* and *Wal. Ruding* the said 6000*l.* to be paid to the same *Wil. Boothby* and *Wal. Ruding* when he should be thereto after required: Nevertheless the said *G. F.* altho' often required, &c. the said 6000*l.* to the said *Wil. Boothby* and *Wal. Ruding* had not then paid, but the same to them or either of them had denied, and then did deny to pay; whereby the same *Wil. Boothby* and *Wal. Ruding* then said that they were prejudiced, and had damage to the value of 100*l.* whereby the same *Wil. Boothby* and *Wal. Ruding* were the less able to satisfy the said then lord the king the debts which they owed to the same then lord the king at his said exchequer, as they said: And therefore they produced the suit, &c. And they then found pledges to prosecute *John Doe* and *Richard Roe*: And the said *G. F.* by *Richard Hodgen* then his attorney came and defended the force and injury when, &c. and then prayed oyer of the bill afore said; and to him it is read, &c. Which being read and heard, the same *G.* then said that he could not deny the action of the said *Wil. Boothby* and *Wal. Ruding* afore said, nor but that he owed to the said *Wil. Boothby* and *Wal. Ruding* the said 6000*l.* in manner and form as the said *Wil. Boothby* and *Wal. Ruding* by their declaration afore said against him did then declare: It was therefore then considered by the barons there, that the said *Wil. Boothby* and *Wal. Ruding* should recover against the said *G. F.* their debt afore said, as also their damages by reason of the detention of that debt to 30*s.* to the same *Wil. Boothby* and *Wal. Ruding* by the same court then there with their assent adjudged; And that the said *G. F.* should be in mercy, &c. as by the records and proceedings thereof in the said court of the said late king of exchequer at *Westminster* remaining more fully appears; which said judgment in form afore said had and obtained was for a true and just debt to the said *Wil. Boothby* and *Wal. Ruding* from the said *G. F.* due, then and yet not paid or satisfied; and the same judgment yet remains in its full force and effect, not reversed, annulled or satisfied: And the same *Wil. Boothby* and *Wal. Ruding* said, that they the said *Wil. Boothby* and *Wal. Ruding* afterwards came into the said court of the said late king of the exchequer, and by the statute in such case provided chose to be delivered to them all the goods and chattels of the said *G.* except his oxen and beasts of his plough, and likewise the one half of the lands and tenements of the said *G.* in his bailiwick, to detain to himself

Confesses the action.

Elegit fuerit.

[171]

The inquisition
return'd.

The defendant
seised in fee of,
&c.

himself the goods and chattels aforesaid as his own proper goods and chattels, and also to hold the one half aforesaid as his freehold to him and his assigns; according to the form of the statute aforesaid, until they should thereout levy the debt and damages aforesaid: Whereupon afterwards, to wit, on the 29th day of *November* in *Michaelmas* term in the 27th year of the reign of the said lord *Charles* the second, late king of *England*, &c. by writ of the said late lord the king of *Elegit* of and upon the said judgment prosecuted, directed to the same then sheriff of the county of *Leicester*, the said then sheriff of the county of *Leicester* was commanded that all the goods and chattels of the said *G*: except his oxen and the beasts of his plough, and likewise the one half of the land and tenements in his bailiwick, of which the same *George* on the morrow of the *Holy Trinity* in the 26th year of the reign of the said late king of *England*, &c. on which day the judgment aforesaid was given, or ever after was seised, he should without delay cause to be delivered to the said *William Boothby* and *Walter Ruding* by a reasonable price and extent, to detain to themselves the goods and chattels aforesaid as their own proper goods and chattels, and also to hold the one half aforesaid as their freehold to them and their assigns, according to the form of the statute aforesaid, until they should thereout levy the debt and damages aforesaid; and in what manner the said writ was executed, the same sheriff was commanded to return to the barons of the exchequer aforesaid at *Westminster* in the octave of the purification of the blessed virgin *Mary* then next following, under his seal and the seals of them by whose oath that extent and appraisement should be made, together with the names of those by whose oaths the said extent and appraisement should be made, and the said writ: On which day the said *William Boothby* and *Walter Ruding* came into the same court in their proper persons, and the sheriff, to wit, *William Cole*, esq; then sheriff of the county of *Leicester* aforesaid returned; that the said *George Faunt* had no goods or chattels in his bailiwick whereby he could levy the debt aforesaid, or any penny thereof; and farther returned on the writ aforesaid a certain inquisition taken before him at the burrough of *Leicester* in the county of *Leicester* aforesaid on the third day of *February* in the 28th year of the reign of the said lord the late king *Charles* the second, by the oaths of *Edward Briddle*, *Thomas Hadden*, &c. (reciting all the jury) good and lawful men of his county, who being sworn and charged upon their oaths aforesaid said, that the said *George Faunt*, esq; in the writ aforesaid named, at the time of giving the judgment aforesaid in the said writ specified, to wit, on the morrow of the *Holy Trinity* in the 26th year of *Charles* the second, late king of *England*, &c. was seised, and then was seised in his demesne as of fee of and in a capital messuage with the appurtenances, situate, lying and being in *Foston* in the county aforesaid, then in the tenure or occupation of the said *George Faunt*, or his assigns, of the clear yearly

yearly value in all issues beyond reprises of 10s. and of and in a close of pasture with the appurtenances in *Feston* aforesaid in the county aforesaid, called *Mills Close*, containing by estimation, &c. (so on reciting the particulars of all the lands in the same manner): Which said capital messuage with the appurtenances, the said close called *Barne-yard*, the said close called *Mills Close*, the said close called *Halls Close*, the said close called *Redfield*, the said close called *Kilby Close*, the said close called *Gate Close*, the said close called the *Warren*, the said close called *Furzy Close*, (with some others recited) with all and singular their appurtenances, are one equal half of all and singular the messuages, lands and tenements aforesaid; which said moiety he the said sheriff on the day of the caption of the inquisition aforesaid, by virtue of the writ aforesaid, had caused to be delivered to the said *William Boothby* and *Walter Ruding* in the said writ mentioned, to hold to them and their assigns as their freehold until the debt and damages in the said writ named should be therewith fully levied, as he was commanded by the said writ: And the same *William* farther says, that the said sheriff farther returned, that the jury aforesaid on their oaths aforesaid farther said, that the said *George Faunt* in the writ aforesaid mentioned had not, nor on the day of the caption of the inquisition aforesaid, and giving of the judgment aforesaid, or ever after, had any other or more messuages, lands or tenements, or any goods or chattels in his bailiwick, to the knowledge of the jury aforesaid, or by any evidence to them shewn, as by the writ aforesaid, and the return of the inquisition aforesaid, in the said court of the said lord king *Charles* the second of exchequer of record filed, is more fully manifest and appears: And the said *William Faunt* farther says, that the several closes and parcels of land, to wit, the *Mills Close*, the *Hall Close*, the *Redfield*, the *Kilby Close*, the *Gate Close*, the *Warren*, the *Furzy Close*, the *Highway Close*, the *West Meadow* at the bridge, the *West Meadow* at the end of the *Middle Close*, parcel of the closes and tenements in the inquisition aforesaid mentioned, and by the said sheriff of the county of *Leicester* to the said *William Boothby* and *Walter Ruding* by the same inquisition delivered, to hold to them and their assigns until they shall fully levy the debt and damages aforesaid to them due, and the closes in the declaration mentioned to be demised by the said *Nathaniel* to the said *William Faunt*, are one and the same closes, and not other nor divers; into which closes with the appurtenances the said *William Boothby* and *Walter Ruding*, by virtue of the delivery aforesaid, before the demise in the declaration aforesaid mentioned to be made by the said *Nathaniel* to the said *William Faunt*, entered, and were thereof seised as of their freehold until, &c. and being so thereof seised the said *Walter Ruding* afterwards, to wit, on the first day of *February* in the year of the Lord 1697, at *Feston* aforesaid in the county of *Leicester* aforesaid died, and he the said *William Boothby* survived him, and kept himself in by the

Delivery of a moiety to the plaintiffs.

Death of one of the plaintiffs.

[172]

Their debt not
levied.

And so the plain-
tiff had no estate
to demise.

Surrejoinder,
that their judg-
ment was by
fraud, &c.

Rebutter, that
it was for a just
debt.

Surrebutter
maintains his
surrejoinder.

right of survivorship: And farther the said *William Faxnt* says, that neither the said *William Boothby* and *Walter Ruding*, or either of them, in the life-time of the said *Walter* levied nor did either of them levy the debt and damages aforesaid, nor hath the said *William Boothby* after the death of the said *Walter Ruding* hitherto levied the debt and damages aforesaid, but a great part thereof, to wit, the sum of 5000*l.* and more is yet due to the said *William Boothby* not levied or satisfied; and so the said *W. F.* says, that the said *N.* at the time of the demise aforesaid in the declaration aforesaid above mentioned, had not a good and sufficient estate in the tenements aforesaid with the appurtenances whereof he could make the demise aforesaid of the tenements aforesaid with the appurtenances to the said *W. F.* And this the same *W. F.* is ready to verify: Wherefore the same *W. F.* as before prays judgment if the said *N.* ought to have or maintain his action aforesaid against him, &c.

And the said *N.* says, that the judgment aforesaid, by the said *William Boothby* and *Walter Ruding* against the said *G. F.* in form aforesaid had and obtained, was had and obtained by fraud and covin between the said *Will. Boothby* and *Walter Ruding* and the said *G. F.* at *Foston* aforesaid in the county of *Leicester* aforesaid then first had, to defraud the said *N.* and other creditors of the said *G.* of their true and just debts: And this he is ready to verify: Wherefore as before he prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c.

And the said *William* says, that the judgment aforesaid, by the said *William Boothby* and *Walter Ruding* against the said *G. F.* in form aforesaid had and obtained, was had and obtained for a true and just debt to the same *William Boothby* and *Walter Ruding* from the said *G. F.* due; without that, that the judgment aforesaid, by the said *William Boothby* and *Walter Ruding* against the said *G. F.* in form aforesaid had and obtained, was had and obtained by fraud and covin between the said *William Boothby* and *Walter Ruding* and the said *G. F.* first had, to defraud the said *N.* and other creditors of the said *G.* of their true and just debts in manner and form as the said *N.* hath above thereof in surrejoining pleaded: And this he is ready to verify: Wherefore as before he prays judgment, and that the said *N.* may be precluded from his action aforesaid thereof against the said *William* had, &c.

And the said *N.* as before says, that the judgment aforesaid, by the said *William Boothby* and *Walter Ruding* against the said *G. F.* in form aforesaid had and obtained, was had and obtained by fraud and covin between the said *William Boothby* and *Walter Ruding* and the said *G. F.* first had, to defraud the said *N.* and other creditors of the said *G. F.* of their true and just debts in manner and form as the said *N.* above in surrejoining hath pleaded, to wit, at *Foston* aforesaid in the county of *Leicester* aforesaid: And this he prays may be inquired of by the country:

And

And the said *W. F.* thereof likewise, &c. Therefore let a jury thereon come before the lord and lady the king and queen at *Westminster* on day next after and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Rebow, knt. and his wife, against Plomer.

Middlesex, to wit. *I* *Isaac Rebow*, knt. and *Elizabeth* his wife, executrix of the last will and testament of *John Lemott Honywood*, esq; deceased, complain of *George Plomer*, son and heir of *Sarah Plomer* widow deceased, who was heir and devisee of *Will. Wilkinson*, esq; deceased, otherwise called *Will. Wilkinson* of the *Inner Temple*, esq; being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, in a plea that he render to them 400*l.* of lawful money of *Great Britain* which he unjustly detains from them, for this, to wit, that whereas the said *William* in his life-time, to wit, on the 27th day of *February* in the year of the Lord 1681, at the parish of *St. Clement Danes* in the county of *Middlesex* aforesaid, by his certain writing obligatory sealed with the seal of the said *William*, and to the court of the said lord the now king here shewn, the date whereof is the same day and year, acknowledged himself to be bound to the said *John Lemott Honywood* in his life-time in the said 400*l.* to be paid to the same *John* when he should be thereto required, and well and faithfully to make the same payment he bound himself and his heirs by the same writing: Nevertheless the said *William* in his life-time, and the said *Sarah* who was heir and devisee of the said *William* after his death, and the said *George*, son and heir of the said *Sarah*, after the death of the said *Sarah*, altho' often required, &c. the said 400*l.* to the said *John* in his life-time, or to the same *Isaac* and *Elizabeth* after the death of the said *John*, or to either of them, have not yet paid, nor hath any of them paid, but have altogether denied to pay the same to them, or any of them, and the said *George* doth yet deny to pay the same to the said *Isaac* and *Elizabeth*, and unjustly detains, to the damage of the said *Isaac* and *Elizabeth* 10*l.* And therefore they produce the suit, &c. And the same *Isaac* and *Elizabeth* produce here in court the letters testamentary of the said *John*, whereby it sufficiently appears to the court here, that the said *Elizabeth* is executrix of the last will and testament of the said *John*, and thereof hath the administration, &c.

Debt on bond made 1681, sued 1718 by an executor against the heir and devisee of the obligor.

[173]

When, &c. And prays oyer of the writing obligatory aforesaid; and to him it is read, &c. he prays likewise oyer of the condition of the same writing; and to him it is read in these words, to wit, The condition of this obligation is such, that if the above-bounden *William Wilkinson* and *Priscella Honywood*, or either of them, their or either of their heirs, executors or administrators, do well and truly pay or cause to be paid unto the

Oyer of the condition.

Payment after
the day pleaded.

This is naught,
because it ties
down the evi-
dence to that
day.

Repl. that he
did not pay.

above-named *John Lemott Honeywood*, his executors, administrators or assigns, the full sum of 212*l.* of good and lawful money of *England*, on the first day of *March* which shall be in the year of our Lord 1682, then this obligation to be void, or else to remain in full force: Which being read and heard the said *George* says, that the said *Isaac* and *Elizabeth* ought not to have or maintain their action aforesaid thereof against him, because he says, that the said *William Wilkinson* in his life-time, after the said 1st day of *March* in the condition aforesaid mentioned, and before the exhibition of the bill aforesaid, to wit, on the 27th day of *February* in the year of the Lord 1692, paid to the said *John Lemott Honeywood* 200*l.* being the principal sum to the same *John Lemott Honeywood* by the condition of the writing aforesaid due, together with the whole interest for the said 200*l.* then due, to wit, at the parish of *St. Clement Danes* aforesaid in the county of *Middlesex* aforesaid: And this he is ready to verify: Wherefore he prays judgment if the said *Isaac* and *Elizabeth* ought to have or maintain their action aforesaid thereof against him, &c.

And the said *Isaac* and *Elizabeth* say, that they by any thing before alledged ought not to be precluded from their action aforesaid against the said *George* had, because they say, that the said *William Wilkinson* in his life-time, after the said 1st day of *March* in the condition aforesaid mentioned, and before the exhibition of the bill aforesaid, did not pay to the said *John Lemott Honeywood* the said 200*l.* and the interest for the same due, as the said *George* above by pleading hath alledged: And this they pray may be inquired of by the country: And the said *George* thereof likewise: Therefore let a jury thereon come before the lord the king at *Westminster* on day next after and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

The plaintiff recovered a Verdict Mich. 5 Geo.

Wrench and Jaques.

Debt on a
bail-bond.

Bill of *Middle-*
sex sued out
against the
Principal.
Tract. Reg.
172.

Midd, to wit. *John Wrench*, assignee of *R. B. kn.* and *R. K. kn.* sheriff of the county of *Middlesex* aforesaid, according to the form of the statute in such case thereof lately made and provided, complains of *John Jaques*, otherwise, &c. in the custody of the marshal, &c. in a plea that he render to him 40*l.* of lawful money of *Great Britain*, which he owes him and unjustly detains, for this, to wit, that whereas after the 1st day of *Trinity* term in the year of the Lord 1706, to wit, on the 20th day of *May* in the year of the Lord 1715, the said *John Wrench* prosecuted out of the court of the said lord the king before the king himself (the same court then being at *Westminster* in the county aforesaid) a certain precept of the said lord the king, commonly called a bill of *Middlesex*, to the sheriff of the county of *Middlesex* aforesaid directed, by which precept the said sheriff was commanded

del to take one *Peter Brittain* the younger, if he should be found
 in his bailiwick, and safely keep him, so that he might have his
 body before the said lord the king at *Westminster* on *Monday* next
 after the morrow of the Ascension of the Lord, to answer to the
 said *John Wrench* in a plea of trespass, and also to the bill of the
 said *John Wrench* against the said *P. Brittain* for 20 l. debt, ac-
 cording to the custom of the court of the said lord the king, before
 the king himself to be exhibited: Which said precept afterwards,
 and before the return of the same, to wit, on the said 20th day of
May 1715 above said, at the parish of *St. Clement Danes* in the
 county of *Middlesex* above said, to the said *R. B. knt.* and *R. K.*
knt. being then sheriff of the county of *Middlesex* above said, was
 delivered in due form of law to be executed: By virtue of which
 said precept to the sheriff of *Middlesex* above said in form above said
 directed, the said *R. B. knt.* and *R. K. knt.* being then as afore-
 said sheriff of the county of *Middlesex* above said, afterwards, to wit,
 on the said 20th day of *May* 1715 above said, took and arrested
 the said *Peter Brittain* at the parish above said in the county afore-
 said, and the said *Peter Brittain* then and there in his custody,
 by virtue of the precept above said and that arrest, had detained
 and kept: And whereas the said *John Jaques* afterwards, to wit,
 on the 28th day of *May* 1715 above said, at the parish above said in
 the county above said, the said *Peter Brittain* being so as afore-
 said taken, arrested, detained and kept, by the same sheriff of the
 county of *Middlesex* above said, and then at the parish above said in
 the county above said, in the custody of the said sheriff by virtue of
 the precept above said remaining, by his certain writing obligatory
 sealed with the seal of the said *John Jaques*, and to the court of
 the said lord the king now here shewn, the date of which said writ-
 ing obligatory is the same 28th day of *May* in the year of the
 Lord 1715 above said, acknowledged himself to be held and firm-
 ly bound to the said *R. B. knt.* and *R. K. knt.* being then as
 afore said sheriff of the county above said, by the name of *R. B. knt.*
 and *R. K. knt.* sheriff of the county above said, in the said 40 l. to
 be paid to the same sheriff or his certain attorney, executors, ad-
 ministrators or assigns, when he should be thereto after re-
 quired; with a condition to the same writing obligatory subscribed,
 that if *P. Brittain* should appear before the said lord the king at
Westminster on the said *Monday* next after the morrow of the As-
 cension of the Lord, to answer to the said *John Wrench* in the plea
 above said, and also to the bill as above said for 20 l. debt, then the
 writing obligatory above said should be void and of no force, other-
 wise it should stand and remain in its full strength, force and ef-
 fect: And whereas the said *P. Brittain* did not appear before the
 said lord the king at *Westminster* on the said *Monday* next after the
 morrow of the Ascension of the Lord in the condition above said
 mentioned, according to the form and effect of that condition,
 whereby the writing obligatory above said became forfeited: And
 whereas afterwards, to wit, on the 11th day of *June* in the year
 of the Lord 1715 above said, at the parish above said in the county
 above said,

And delivered
to the sheriff.

The defen-
dant arrested.

The bond given.

[174]

Condition to
appear.

The bond for-
feited.

Assigned to the
plaintiff;

4 A. c. 16.
§. 20.

whereby an
action accrued.

afore said, at the request and costs of the said *John Wrench*, being a common person as afore said, the said *R. B. knt.* and *R. K. knt.* sheriff of the county of *Middlesex* afore said, by the name of *R. B. knt.* and *R. K. knt.* sheriff of the county afore said, assigned to the said *John Wrench* the writing obligatory afore said, so for the appearance of the said *P. Brittain* as afore said made, by indorsing the assignment of the said sheriff of the writing obligatory afore said on that writing obligatory, and by then and there attesting the same assignment under the hand and seal of the said sheriff in the presence of two credible witnesses, according to the form of the statute in such case thereof lately made and provided; which said assignment (the date whereof is the same 11th day of *June* in the year of the Lord 1715 afore said) is also to the said court of the said lord the king now here shewn; by reason of which said premises, according to the form of the statute in that behalf made and provided, an action accrued to the same *John Wrench*, as assignee of the said *R. B. knt.* and *R. K. knt.* sheriff of the said county of *Middlesex* as afore said, to demand and have of the said *John Jaques* the said 40 *l.* Nevertheless the said *John Jaques*, altho' often required, &c. the said 40 *l.* to the same *John Wrench* or to the same *R. B.* and *R. K.* or to any of them, hath not yet paid, but the same to the said *John Wrench* or the said *R. B.* and *R. K.* or any of them, hath hitherto altogether denied to pay, and doth yet deny to pay the same to the said *John Wrench*, to the damage of the said *John Wrench* 10 *l.* And therefore he produces the suit, &c.

Bokenham and his wife against Manley.

Debt against an
administratrix
on a bond made
by the intestate
to the plaintiff's
wife while sole.

London, to wit. *William Bokenham*, esq; and *Frances* his wife, late called *Frances Manley*, spinster, complain of *Margaret Manley*, widow, administratrix of all and singular the goods and chattels, rights and credits, which belonged to *Thomas Manley*, gent. her late husband deceased, otherwise lately called *Thomas Manley* of the parish of *St. Margaret* near the city of *Rocheſter* in the county of *Cambridge*, gent. in the custody of the marshal, &c. in a plea that she render to them 120 *l.* of lawful money of *England*, which she unjustly detains from them, for this, to wit, that whereas the said *Thomas* in his life-time, to wit, on the 22d day of *September* in the 3d year of the reign of the lord *William* now king and the lady *Mary* late queen of *England*, &c. at *London* afore said, to wit, in the parish of *St. Mary-le-bow* in the ward of *Cheape*, by his certain writing obligatory sealed with the seal of the said *Thomas* in his life-time, and to the court of the lord king *William* the third now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *Frances* while she was sole, by the name of *Frances Manley* of the parish of *St. Margaret* afore said in the county afore said, spinster, in the said 120 *l.* to be paid to the same *Frances* when he

he should be thereto required: Nevertheless the said *Thomas* in his life-time, or the said *Margaret* after the death of the said *Thomas*, (to which said *Margaret* administration of all and singular the goods and chattels, rights and credits which belonged to the said *Thomas* at the time of his death, who died intestate, &c. after the death of the said *Thomas*, was committed,) altho' often required, &c. the said 120*l.* to the said *Frances* while she was sole, or to the same *William* and *Frances* after the espousals between them celebrated, have not yet paid, nor hath either of them paid, but the same to the said *Frances* while she was sole, and to the said *William* and *Frances* after the espousals between them celebrated, have altogether denied to pay, and the said *Margaret* doth yet deny to pay them to the said *William* and *Frances*, and unjustly detains the same, to the damage of the said *William* and *Frances* 10*l.* And therefore they produce the suit, &c.

Salk. 36 to 40.

Astrie who as well, &c. against *Fiffenden*.

[175]

Suffex, to wit. *Samuel Astrie*, gent. who sues as well for the lord the king as for himself in this behalf, complains of *Thomas Fiffenden* the elder, being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, in a plea that he render to the said lord the king and to the same *Samuel*, who as well, &c. 200*l.* of lawful money of *England* which he owes them and unjustly detains, for this, that the said *Tho. Fiffenden* on the 20th day of *May* in the 34th year of the reign of the lord *Charles* the second, now king of *England*, &c. being above the age of 16 years, and then and from thence continually after for the space of ten months then next following an inhabitant and commorant within this kingdom of *England*, to wit, at the parish of *All Saints* in *Lewes* in the county aforesaid, did not repair, nor endeavour to repair himself to his parochial church of *All Saints* in *Lewes* aforesaid, nor to any other church, chapel, or usual place of common prayer and preaching, or of other divine service there used and administred, according to the form of the statute in such case made and provided, but himself for all the time aforesaid voluntarily and obstinately without any lawful or reasonable cause, or any reasonable excuse, did forbear from the same, against the form of the statute in such case made and provided; whereby an action accrued as well to the lord the king as to the said *Samuel*, who as well, &c. to demand and have of the said *Thomas* the said 200*l.* to wit, for every month of the said ten months in which the same *Thomas* from church, chapel, or place of prayer and preaching, or other divine service there as aforesaid used and administred, did forbear himself against the form of the statute aforesaid, 20*l.* Nevertheless the said *Thomas*, altho' often required, &c. the said 200*l.* to the said lord the king and the said *Samuel*, who as well, &c. hath not paid, but the same to them hath altogether refused, and yet doth refuse to pay, to the di-

Debt by an in-
former on the
statute Car. 2.
for not coming
to church.
2 Bro. 91.
Salk. 30, 373.

Plea,
nothing:

mage of the said *Samuel* 40*l.* And therefore as well for the said lord the king as for himself he produces the suit, &c.

When, &c. and says, that he doth not owe to the said lord the king and the said *Samuel*, who as well, &c. the said 200*l.*, nor any penny thereof, in manner and form as the said *Samuel*, who as well, &c. against him complains: And of this he puts himself upon the country: And the said *Samuel*, who as well, &c. thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Powle and another against Barwell.

Debt against the
bail on a bond.
Pract. Reg.
172.

The principal
arrested by
Latitat.

Bail-bond taken.

North'ton, to wit. *Emery Powle*, widow, and *John Tucker*, assignees of *Francis St. John* now bart. late *Francis St. John*, esq; late sheriff of the county aforesaid, according to the form of the statute in such case thereof lately made and provided, complain of *John Barwell*, otherwise called, &c. in the custody of the marshal, &c. in a plea that he render to them 1060*l.* of lawful money of *Great Britain* which he owes them and unjustly detains, for this, to wit, that whereas one *Robert Tebutt* the younger, after the first day of *Trinity* term in the year of the Lord 1706, to wit, on the 22d day of *July* in the year of the Lord 1515, at *Oundle* in the county aforesaid, by the said *Francis St. John* then esq; then sheriff of the county aforesaid, was arrested at the suit of them the said *Emery* and *John* by virtue of a certain writ of the lord the king, called a *Latitat*, out of the court of the said now lord the king before the king himself (the same court then being at *Westminster* in the county of *Middlesex*) by the said *Emery* and *John* prosecuted against the said *Robert Tebutt* the younger in a plea of trespass, and also on a bill of the said *Emery* and *John* for 800*l.* on promise, according to the custom, &c. returnable in the same court on *Monday* next after three weeks of *St. Michael* then next following: And whereas the said *Francis St. John*, being then as aforesaid sheriff of the county of *North'ton* aforesaid, of and upon that arrest took bail for the said *Robert Tebutt* the younger, to wit, the said *Robert Tebutt* the younger, and the said *John Barwell* and one *Robert Tebutt*, which said *Robert Tebutt* the younger, *John Barwell* and *Robert Tebutt*, on the said 22d day of *July* in the year of the Lord aboveaid, at *Oundle* aforesaid, in the county aforesaid, by a certain writing obligatory, which the same *Emery* and *John*, as well with the seal of the said *John Barwell* as with the seals of the said *Rob. Tebutt* the younger and *Rob. Tebutt* sealed, here in court produce, the date whereof is the same day and year last aboveaid, by which said writing the said *John Barwell* acknowledged himself to be hld and firmly bound to the said *F. St. John*, being then

then as aforesaid sheriff of the said county, by the name of *F. St. John*, esq; sheriff of the county aforesaid, in the said 1060*l.* to be paid to the same sheriff, or his assigns, when he should be thereto required, with a condition to the same writing obligatory subscribed, that if the said *Robert Tebutt* the younger should appear before the said lord the king at *Westminster* on the said *Monday* next after three weeks of *St. Michael*, to answer to the said *Emery Powle*, widow, and *John Tucker* in a plea of trespass, and also the bill of the said *Emery* and *John* against the said *R. Tebutt* the younger for 800*l.* upon promise, according to the custom of the court of the lord the king, that then that obligation should be void and of no effect, otherwise it should stand in its full strength, force and effect, as by that writing obligatory, and the condition thereof, is more fully manifest and appears; And whereas the said 800*l.* not being paid to them, afterwards, to wit, on the third day of *March* in the year of the Lord abovesaid, at *Oundle* aforesaid in the county aforesaid, at the request and charges of the said *Emery* and *John* the plaintiffs in that suit, the said *F. St. John*, by the name of *F. St. John*, bart. late sheriff of the county of *North'ton* aforesaid, by a certain indorsement on that writing obligatory under the hand and seal of the said late sheriff made and attested in the presence of *Eliz. Hobkins* and *Tho. Elded* two credible witnesses, which the same *Emery* and *John*, sealed with the seal of office of the said *F. St. John*, here in court produce, the date whereof is the same day and year last mentioned, assigned to the same *Emery* and *John* the writing obligatory aforesaid, according to the form of the statute in such case lately made and provided, of which premises the said *John Barwell* afterwards, to wit, the same day, year and place last abovesaid had notice: And the said *Emery* and *John* in fact say, that he the said *R. Tebutt* the younger did not appear before the said lord the king at *Westminster* on the said *Monday* next after three weeks of *St. Michael* in the condition aforesaid mentioned, according to the form of that condition, whereby the writing obligatory aforesaid became forfeited: By reason of which premises, and by force, and according to the form of the statute aforesaid in such case lately made and provided, an action accrued to the said *Emery* and *John* as assignees of the said *F. St. John*, late sheriff of the county of *North'ton* aforesaid, to demand and have of the said *John Barwell* the said 1060*l.* Nevertheless the said *John Barwell*, altho' often required, &c. the said 1060*l.* to the same *Emery* and *John* hath not yet paid, but hath hitherto altogether denied, and yet doth deny to pay them the same, to the damage of the said *Emery* and *John* 20*l.* And therefore they produce the suit, &c.

[176]

The condition.

The bond assigned.

Breach.

Whereby an
action accrued.
4 A. c. 16.
§. 2.

Powle and another against Tebutt.

The like against
the principal.

North'ton, to wit. *EMery Powle*, widow, and *John Tucker*, assignees, &c. complain of *Robert Tebutt* the younger, otherwise called, &c. in the custody of the marshal, &c. in a plea that he render to them 1060*l.* of lawful money of *Great Britain* which he owes them and unjustly detains, for this, to wit, that whereas the said *Robert* after the first day of *Trinity* term, 1706, to wit, on the 22d day of *July* 1715, at *Oundle* in the county aforesaid, by the said *F. St. John* then esq; then sheriff of the said county, was arrested at the suit of them the said *J.* and *E.* by virtue of a certain writ of the said lord the king, called a *Latitat*, out of the court of the said now lord the king before the king himself, the same court then being at *Westminster* in the county of *Middlesex*, by the said *E.* and *J.* prosecuted against the said *Robert* in a plea of trespass, and also on a bill of the said *E.* and *J.* for 800*l.* upon promise, according to the custom, &c. returnable in the same court on *Monday* next after three weeks of *St. Michael* then next following: And whereas the said *F. St. John*, being then as aforesaid sheriff of the said county, of and upon that arrest took bail for the said *R. Tebutt* the younger, to wit, the said *R. Tebutt* the younger, and *J. Barwell* and *R. Tebutt*, which said *R. Tebutt* the younger, *J. Barwell* and *R. Tebutt*, on the said 22d day of *July* in the year of the Lord aforesaid, at *Oundle* aforesaid in the county aforesaid, by a certain writing obligatory, which the same *E.* and *J.* as well with the seal of the said *R. Tebutt* the younger, as with the seals of *J. Barwell* and *R. Tebutt* sealed, here in court produce, the date whereof is the day and year last aforesaid; by which said writing the said *R. Tebutt* the younger acknowledged himself to be held and firmly bound to the said *F. St. John*, being then as aforesaid sheriff of the county aforesaid, by the name of *F. St. John*, esq; sheriff of the county aforesaid, in the said 1060*l.* to be paid to the same sheriff or his assigns, when he should be thereto required, with a condition to the said writing obligatory subscribed, that if the said *R. Tebutt* the younger should appear before the said lord the king at *Westminster* on the said *Monday* next after three weeks of *St. Michael*, to answer the said *E. Powle*, widow, and *J. Tucker* in a plea of trespass, and also the bill of the said *E.* and *J.* against the said *R. Tebutt* the younger for 800*l.* upon promise, according to the custom of the court of the lord the king, that then the said obligation should be void and of no force, otherwise it should stand and remain in its full strength, force and effect, as by the writing obligatory aforesaid and the condition thereof is more fully manifest and appears: And whereas also the said 800*l.* being to them then not paid, afterwards, to wit, on the third day of *May* in the year of the Lord aforesaid, at *Oundle* aforesaid in the county aforesaid

aforesaid, at the request and charges of them the said *E.* and *J.* the plaintiffs in that suit, the said *F. St. John*, by the name of *F. St. John*, bart. by a certain indorsement on the said writing obligatory under the hand and seal of the said late sheriff, made and attested in the presence of *E. H.* and *T. F.* two credible witnesses, which the same *E.* and *J.* with the seal of office of the said *F. St. John* sealed here in court produce, the date whereof is the said day and year last-mentioned, assigned to the said *E.* and *J.* the writing obligatory aforesaid, according to the form of the statute in such case lately made and provided, of which premises the said *R. Tebutt* the younger afterwards, to wit, the same day, year and place last abovesaid, had notice: And the said *E.* and *J.* in fact say, that he the said *R. Tebutt* the younger did not appear before the said lord the king at *Westminster* on the said *Monday* next after three weeks of *St. Michael* in the condition aforesaid mentioned, according to the form of the said condition, whereby the writing obligatory aforesaid became forfeited: By reason of which premises, and by force and according to the form of the said statute in such case lately made and provided, an action accrued to the same *E.* and *J.* as assignees of the said *F. St. John*, late sheriff of the county aforesaid, to demand and have of the said *R. Tebutt* the younger the said 1060*l.* Nevertheless the said *R. Tebutt* the younger, altho' often required, &c.

4 A. c 16.
sect. 20.

Parsley and his wife against Liversey and his wife.

London, to wit. *H*enry *Parsley* clerk, and *Margaret* his wife, lately called *Margaret Barnham*, complain of *Paradine Liversey*, etq; and *Elizabeth* his wife, executrix of the last will and testament of *Archibald Clinkard*, late father of the said *Elizabeth*, deceased, otherwise called, &c. in the custody of the marshal, &c. in a plea that they render to them 200*l.* which they unjustly detain from them, for this, to wit, that whereas the said *Archibald* in his life-time, to wit, on the first day of *December* in the year of the Lord 1674 at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, by his certain writing obligatory sealed with the seal of the said *Archibald* in his life-time, and to the court of the said lady the queen now here shewn, the date whereof is the same day and year, bound himself, his heirs, executors and administrators, in the penal sum of 200*l.* of lawful money of *England*, to pay to the same *Margaret* (by the name of *Mrs. Margaret Barnham*, daughter of *Francis Barnham* of *Linton* aforesaid and *Margaret* his wife) the sum of 20*l.* a year by equal portions at or upon the four usual feast-days in the year, to wit, the Birth of our Saviour, the annunciation of the virgin *Mary*, the feast-day of *St. John* the baptist, and the feast of *St. Michael* the archangel, by 5*l.* every quarter of a year; the first payment to begin on the feast of *St. John* the baptist next ensuing

Debt against an executrix on a bill penal made by her testator to pay an annuity of 20*l.* per ann.
Salk. 749.

being the date of the writing aforesaid; which said sum of 20*l.* was to be paid at the then dwelling-house of the said *Francis Barnham*, father of the said *Margaret*, for the term of six years next following the first payment, if the said *Margaret* the now plaintiff should so long live: And in fact the same *Henry* and *Margaret* say, that 5*l.* for one quarter of a year ended at the feast of *St. Michael* the archangel in the year of the Lord 1679, by the said *Archibald* in his life-time to the same *Margaret* the now plaintiff while she was sole, were due in arrear and unpaid, and yet are due in arrear and unpaid; whereby an action accrued to the same *Margaret* while she was sole, to demand and have of the said *Archibald Clinkard* in his life-time, and likewise to the said *Henry* and *Margaret* after the espousals between them celebrated, to demand and have of the said *Paradine* and *Elizabeth* after the death of the said *Archibald*, the said 200*l.* Nevertheless the said *Archibald* in his life-time, and while the same *Margaret* was sole, by the said *Margaret* to do it, and the said *Paradine* and *Elizabeth*, or either of them, after the death of the said *Archibald* by the said *Margaret* while she was sole, and also by the said *Henry* and *Margaret* after the espousals between them celebrated, altho' often required, &c. the said 200*l.* to the same *Margaret* while she was sole, or to the same *Henry* and *Margaret*, or either of them, after the espousals between them celebrated, have not paid, nor hath any of them paid, but have hitherto altogether denied to pay them the same, and the said *Paradine* and *Elizabeth*, and each of them, do still deny to pay them the same, to the damage of the said *Henry* and *Margaret* 40*l.* And therefore they produce the suit, &c.

Browne and Kent.

Debt by an administrator during minority against an executor on bond.

London, to wit. **T** *Thomas Browne*, administrator of all and singular the goods and chattels, rights and credits, which belonged to *Dixy Kent* deceased at the time of his death, during the minority of *Hannah Kent*, *Jane Kent*, and *Daniel Kent*, the legitimate children of the said *Dixy Kent*, complains of *Elizabeth Kent*, widow, executrix of the last will and testament of *John Kent* her late husband deceased, otherwise lately called *John Kent*, citizen and vintner of *London*, in the custody of the marshal, &c. in a plea that she render to him four hundred pounds of lawful money of *England*, which she unjustly detains from him, for this, to wit, that whereas the said *John* in his life-time, to wit, on the 20th day of *January* in the 36th year of the reign of the lord *Charles* the second, late king of *England*, &c. at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, by his certain writing obligatory sealed with the seal of the said *John* in his life-time, and to the court of the said lady the queen now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *Dixy Kent* in his life-time in

[178]
Salk. 37, 40.

in the said 400*l.* to be paid to the same *Dixy*, his executors or administrators, when he should be thereto after required: Nevertheless the said *John* in his life-time, or the said *Elizabeth* after the death of the said *John*, altho' often required, &c. the said 400*l.* to the said *Dixy* in his life-time, or to one *D. Browne* now deceased, late administrator of all and singular the goods and chattels, rights and credits, which belonged to the said *Dixy* at the time of his death, during the minority of the said *Hannah*, *Jane*, and *Daniel*, or to the said *Thomas* after the several deaths of the said *Dixy* and *Daniel*, (to which said *Thomas* administration of all and singular the goods and chattels, rights and credits, which belonged to the said *Dixy* during the minority of the said *Hannah*, *Jane* and *Daniel*, after the death of the said *Daniel*, the letters of administration of the goods of the said *Dixy* deceased, to the said *Daniel* for the use and during the minority of the said infants formerly granted, being by reason of the death of the said *Daniel* determined and expired, by *Thomas* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England*, after the death of the said *Daniel*, to wit, on the 15th day of *November* 1700, at *London* aforesaid in the parish and ward aforesaid, was duly committed,) or to any of them have not paid, nor hath either of them paid, but the same to the said *Dixy* in his life-time, and to the said *Daniel* in his life-time, and to the said *Thomas* after the death of the said *Dixy* and *Daniel*, have altogether denied to pay, and the same to the said *Thomas* the said *Elizabeth* doth yet deny to pay, and unjustly detains, to the damage of the said *Thomas* 20*l.* And therefore he produces the suit, &c. And the same *Thomas* produces here in court the letters of administration aforesaid of the archbishop aforesaid, which the commission of the administration aforesaid to the same *Thomas* after the death of the said *Daniel* in form aforesaid testify, &c.

Administration
granted by the
A. B. of *Can-*
terbury, to an-
other who died.
1 Pract. Reg.
37, 43.

Profect of the
administration
to the plaintiff.

Frith and his wife against Heard.

London, to wit. *E* *Edward Frith* and *Margaret* his wife, executrix of the last will and testament of *Samuel Masson* late deceased, complain of *R. Heard* administrator of all and singular the goods and chattels, rights and credits, which belonged to *J. Heard* late of *Ware* in the county of *Hertford*, yeoman deceased, otherwise called, &c. in the custody of the marshal, &c. in a plea that he render to them 40*l.* of lawful money of *England*, which he unjustly detains from them, for this, to wit, that whereas the said *John* in his life-time, to wit, on the 31st day of *March* 1688, at *London* aforesaid, to wit, in the parish of *St. Dunstan in the West* in the ward of *Farringdon Without*, by his certain writing obligatory sealed with the seal of the said *John* in his life-time, and to the court of the said lord the king now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the

Debt by an exe-
cutor against an
administrator on
bond.

the said *S.* in his life-time in the said 40*l.* to be paid to the said *S.* when he should be thereto after required: Nevertheless the said *J.* in his life-time, or the said *R.* after his death, altho' often required, &c. to the same *S.* in his life-time, or to the said *M.* after his death while she was sole, or to the said *E.* and *M.* after the espousals between them celebrated, the said 40*l.* have not, nor hath either of them, yet paid, but the said *J.* in his life-time did altogether refuse, and the said *R.* after his death doth yet refuse to pay, and unjustly detains the same, to the damage of the said *E.* and *M.* 10*l.* And therefore they produce the suit, &c. And the same *E.* and *M.* produce here in court the letters testamentary of the last will and testament of the said *S.* whereby it sufficiently appears to the court here, that she the said *M.* is executrix of the will aforesaid, and thereof hath the administration, &c.

Joyner and Horwood.

Debt by an executrix against an attorney on bond.

Midd. to wit. *M*argery Joyner, widow, executrix of the last will and testament of *R. Joyner*, complains of *Jonathan Horwood* of the parish of *St. Margaret Westminster* in the county of *Middlesex*, gent. one of the attornies of the court of the lord the king before the king himself, being present here in court in his proper person, otherwise called, &c. in a plea that he render to her 100*l.* of lawful money of *England*, which he unjustly detains from her, for this, to wit, that whereas the said *J.* on the 7th day of *May* in the 36th year of the reign of the lord *Charles* the second, late king of *England*, &c. at *Westminster* in the county of *Middlesex* aforesaid, by his certain writing obligatory sealed with the seal of the said *J.* and to the court of the said lord the king now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *R.* in his life-time in the said 100*l.* to be paid to the same *R.* when he should be thereto after required: Nevertheless the said, &c.

Offley against Orme and another.

[179]
Debt for rent of a rectory and tithes by indenture of demise.

Middlesex to wit. *F*rances Offley, widow, complains of *Thomas Orme*, esq; and *Hugh Humphries*, clerk, in the custody of the marshal, &c. in a plea that they render to her 84*l.* of lawful money of *England*, which they owe her and unjustly detain, for this, to wit, that whereas by a certain indenture made at the parish of *St. Clement Danes* in the county of *Middlesex* aforesaid, on the 26th day of *February* in the year of the Lord 1682, between the said *Frances Offley*, widow and relict of *Gabriel Offley*, doctor of divinity, and late prebendary of the prebend of *Longdon*, founded in the cathedral church of *Litchfield* in the county of *Stafford*, deceased, *Mary Offley*, spinster, daughter of the said *Gabriel* and *Frances Offley*,
Henry

Henry Herbert of Ribsford in the county of *Worcester*, esq; and *Joseph Offley* of the *Middle-Temple*, *London*, esq; of the one part, and the said *Thomas Orme*, by the name of *Thomas Orme of Hanch* in the said parish of *Longdon*, esq; and the said *Hugh Humphries*, by the name of *Hugh Humphries*, vicar of *Longdon* aforesaid and prebendary of *Litchfield* aforesaid, of the other part, one part of which indenture sealed with the seals of the said *Thomas* and *Hugh* the same *Frances* produces here in court, the date whereof is the same day and year abovesaid, the said *Frances*, *Mary*, *Henry* and *Joseph*, for and in consideration of the rent and covenants in the same indenture expressed on the part of the said *Thomas* and *Hugh* to be paid and performed, did demise and to farm let unto the said *Thomas Orme* and *Hugh Humphries* all that prebend, rectory or parsonage of *Longdon* aforesaid, with all tithes of grain and hay growing and renewing, or which at any time during the term by the said indenture demised should grow, arise and renew on the same, situate, lying and being in the said county of *Stafford* and the city and county of *Litchfield*, together with all rights, pensions, members, portions, profits, commodities and appurtenances to the same prebend belonging or in any manner appertaining, together with all and all manner of houses, edifices and buildings, yards, gardens, glebe-lands, meadows, pastures, commons, chief rents, reversion, services, tithes, tithings, fruits, oblations, obventions, emoluments and all rights, properties, advantages and hereditaments whatsoever to the said prebend belonging or appertaining (except the presentation and advowson of and to the vicarage of *Longdon* aforesaid, when and as often as the same should become vacant during the term in the said indenture granted; To have and to hold, perceive, receive and enjoy all the said prebend, rectory or parsonage, glebe-lands houses, meadows, pastures, commons, tithes, tithings, fruits, oblations, obventions and all other the premises whatever, by the said indenture demised, with the appurtenances (except before excepted) to the said *Thomas Orme* and *Hugh Humphries*, their executors, administrators and assigns, from the 30th day of *September* then last past before the date of the said indenture, for, during and unto the full end and term of 20 years and an half and five months from thence next following, and fully to be compleat and ended; Yielding and paying therefore yearly and every year during the first 20 years and an half of the said term unto the said *Frances Offley*, her executors, administrators and assigns, the sum or yearly rent of 42*l*. of lawful money of *England*, at the feast of the annunciation of the blessed virgin *Mary*, and *St. Michael* the archangel, by even and equal portions; the first payment to begin at the feast-day of the annunciation of the blessed virgin *Mary* next ensuing the date of the said indenture; And also yielding and paying to the said *Frances Offley*, her executors, administrators and assigns, for the last five months of the said term, the sum or rent of 21*l*. of like lawful money of *England* on the last day of the

The Premises;

Exception.

Haben^d.Redden^d.

Entry of the
lesses.

[180]
Breach.

Plea, that plain-
tiff entered into
part of the pre-
misses before
any rent due.

the said term, without any deduction, defalcation or abatement to be made of any the rent or rents of 16*l.* 13*s.* 4*d.* payable yearly to the prebendary of *Longdon* afore said, or of the pension or pensions of 30 *l.* payable yearly to the vicar-stall of the said prebend or to the master of the works of the said cathedral church, or of the pension or yearly rent of 8*s.* to the divinity reader or lecturer in the said cathedral church for the time being; or for tenths due to the king's majesty and his successors for the said prebend, or for any other sums of money due or to be due for procurations, synodals or any other charges ordinary or extraordinary, which were or should be due, and thereout issuing either for reparations or any other taxes, charges, assessments or incumbrances whatever, as by the indenture afore said among other things more fully appears; by virtue of which said demise the same *Thomas Orme* and *Hugh Humphries* afterwards, to wit, on the 10th day of *March* in the year of the Lord 1682, into the demised premisses afore said with the appurtenances entered, and were and yet are thereof possessed; and 84*l.* of the rent afore said for the premisses afore said, for two years ended at the feast of the annunciation of the blessed virgin *Mary* last past, to the same *Frances* were in arrear, and yet are in arrear and unpaid; whereby an action accrued to the same *Frances* to demand and have of the said *Thomas Orme* and *Hugh Humphries* the said 84*l.* Nevertheless the said *T. Orme* and *H. Humphries*, altho' often required, &c. the said 84 *l.* to the same *Frances* have not yet paid nor hath either of them paid, but have hitherto altogether denied, and yet do deny to pay her the same, to the damage of the said *Frances* 100*l.* And therefore she produces the suit, &c.

When, &c. and say, that the said *Frances Offley* the now plaintiff ought to have or maintain her action afore said thereof against them, because they say, that after the said demise of the said premisses in the declaration afore said above specified, and before any rent by that demise became due or payable to the said *Frances Offley* the now plaintiff, to wit, on the 20th day of *March* 1682 afore said, she the said *Frances Offley* the now plaintiff with force and arms, &c. into the great parlour, parcel of the parsonage house, parcel of the premisses afore said with the appurtenances, to the same *T. Orme* and *H. Humphries* above in form afore said demised and not excepted, in and upon the possession of them the said *T. Orme* and *H. Humphries* thereof entred, to wit, at *Longdon* afore said in the county of *Stafford* afore said, and them the said *T. Orme* and *H. Humphries* from their possession thereof ejected, expelled and amoved, and them the said *T. Orme* and *H. Humphries*, so from thence expelled and amoved from their possession thereof, from thence until to and after the said feast of the annunciation of the blessed virgin *Mary* in the declaration afore said last mentioned kept out: And this they are ready to verify: Wherefore they pray judgment if the said *Frances Offley* the now plaintiff ought to have or maintain her action afore said thereof against them, &c.

And

And the said *Frances* says, that she by any thing by the said *Thomas* and *Hugh* above in pleading alledged ought not to be precluded from her action aforesaid thereof against them had, because she says, that she the same *Frances* into the said great parlour, parcel of the parsonage house, parcel of the premises aforesaid with the appurtenances, to the said *T. Orme* and *H. Humphries* in form aforesaid demised, did not enter, nor them from thence eject, expel and amove, in manner and form as the said *Thomas* and *Hugh* above by pleading have alledged: And this she prays may be inquired of by the country: And the said *Thomas* and *Hugh* thereof likewise, &c. Therefore the sheriff of *Stafford* is commanded that he cause to come before the lord and lady the king and queen at *Westminster* on day next after twelve, &c. of the neighbourhood of *Longdon* aforesaid, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Repl. and issue thereon.

Hunlocke against Leigh, bart.

London, to wit. **D** *Enham Hunlocke*, merchant taylor, complains of *Tho. Leigh*, bart. son and heir of *Wollei Leigh*, esq; late deceased, otherwise called *Wollei Leigh*, of *Thorpe* in the county of *Surry*, esq; in the custody of the marshal, &c. in a plea that he render to him 300*l.* of lawful money of *England* which he owes him and unjustly detains, for this, to wit, that whereas the said *Wollei* in his life-time, to wit, on the 19th day of *May* 1640 at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, *London*, by his certain writing obligatory sealed with the seal of the said *Wollei* in his life-time, and to the court of the lord the king now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the same *Denham* in the said 300*l.* to be paid to the same *Denham*, when he should be thereto required, and to the same payment well and faithfully to be made the said *Wollei* in his life-time bound himself and his heirs by the same writing: Nevertheless the said *Wollei* in his life-time, and the said *Thomas* after the death of the said *Wollei*, altho' often required, &c. the said 300*l.* to the said *Denham* have not yet paid, nor hath either of them paid, but them to him hitherto to pay the said *Wollei* in his life-time, and the said *Thomas* after the death of the said *Wollei*, have altogether denied, and the said *Thomas* doth yet deny to pay the same, to the damage of the said *Denham* 20*l.* And therefore he produces the suit, &c.

Debt against an heir on bond.

Pract. Reg. 12.

And the said *Thomas* by *G. B.* his attorney comes and defends the force and injury when, &c. and says, that he cannot deny the action of the said *Denham* aforesaid, nor but that the writing aforesaid is the deed of the said *Wollei* his father, nor but that he detains from the said *Denham* the said 300*l.* in the form in which the said *Denham* above against him hath declared: Nevertheless

Plea, that he hath nothing by descent except a reversion.
3 Rep. 134.

[181]

theless the said *Thomas* says, that he hath not any lands or tenements by hereditary descent from the said *Wollei* his father in fee-simple, nor had on the day of the exhibition of the bill of the said *Denham* aforesaid, nor ever after, except four messuages and 17 acres and two rods of land with the appurtenances in *Thorpe* and *Puttenham* in the county of *Surry* of the yearly value of 100*l.* and one messuage with the appurtenances in *Eastwitham* in the county of *Kent* of the yearly value of 40*s.* and except the reversion of the manor of *Hall-place* with the appurtenances, and of five messuages, six cottages, two dove-houses, three gardens, three orchards, 650 acres of land, 200 acres of meadow, 500 acres of pasture, 100 acres of wood, 300 acres of heath and furz, 200 acres of moor and 50*s.* of rent, with the appurtenances in *Thorpe*, *Chertsey*, and *Egham* in the said county of *Surry*, and of the rectory of *Thorpe* with the appurtenances, and of one messuage, one dove-house, 100 acres of land, 40 acres of meadow, 100 acres of pasture, 20 acres of wood, and 50 acres of heath and furz with the appurtenances, in *Puttenham*, *Elsted*, *Seale* and *Tongham* in the said county of *Surry*; which said manor, rectory, tenements and premises with the appurtenances, *John Lowther*, bart. and *Elizabeth* his wife, who was the wife of the said *Wollei*, hold for the term of the life of the said *Elizabeth* in the right of the said *Elizabeth*, and are of no value during the life of the said *Elizabeth*, and after the death of the said *Elizabeth* of the yearly value of 500*l.* and except the reversion of the manor of *Staines* with the appurtenances, and of one cottage, one parcel of land containing 28 feet in breadth and 83 feet in length, and another parcel containing in breadth 24 feet, with the appurtenances in *Staines* in the county of *Middlesex*, and of one messuage and 16 acres of land with the appurtenances in *Addington* in the said county of *Surry*, and of the yearly rent of 11*l.* issuing out of one mill, one messuage and two acres of meadow in *Staines* aforesaid in the said county of *Middlesex*, and of the fairs and market in *Staines* aforesaid to be held, and of a sum or pension of 2*s.* issuing out of the vicaridge of *Staines* aforesaid, after the expiration of 99 years, commencing from the 17th day of *May* in the year of the Lord 1636, thereof granted to one *William Drake*, esq; by the said *Wollei* in his life-time, under the yearly rent of a pepper-corn, by a certain indenture made at *Staines* aforesaid on the same 17th day of *May* in the year of the Lord 1636 aforesaid, between the said *Wollei* on the one part and the said *William Drake* on the other part, bearing date the same day and year: And this he is ready to verify: Wherefore he prays judgment if he, as son and heir of the said *Wollei*, ought to be charged with the debt aforesaid, except in the said four messuages and 17 acres and two rods of land with the appurtenances in *Thorpe* and *Puttenham* aforesaid, and the messuage and appurtenances in *Eastwickham* aforesaid, and except in the said several reversions when they shall happen, by virtue of the writing aforesaid, &c. with this, that the said *Thomas Leigh* will
verify,

verify, that the said *Elizabeth* is still surviving and in full life, to wit, at *London* aforesaid in the parish and ward aforesaid, &c.

And the said *Denham*, for that the said *Thomas* doth not deny the said action of the said *Denham*. nor but that the writing aforesaid is the deed of the said *Wollei*, nor but that the said *Thomas* doth detain from the said *Denham* the said 300*l.* in the form in which the said *Denham* above thereof against him hath declared, prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, to be levied on the said four messuages, &c. and on the said several reversions with the appurtenances when they shall happen, &c. Therefore it is considered, that the said *Denham* recover against the said *Thomas* his debt aforesaid, as also his damages by reason of the detention of that debt to 50*s.* to the said *Denham* with his assent adjudged, to be levied on the said four messuages and 17 acres and two rods of land with the appurtenances in *Thorpe* and *Puttenham* aforesaid, and the said messuage with the appurtenances in *Eastwickham* aforesaid, and on the said several reversions with the appurtenances when they shall happen: And the said *Thomas* in mercy, &c.

Plaintiff prays judgment when the reversion shall happen.

Judgment.

Lynch against *Coote, esq;*

Midd', to wit. *John Lynch*, gent. complains of *Richard Coote*, esq; in the custody of the marshal, &c. in a plea that he render to him 96*l.* 4*s.* 3*d.* which he owes him and unjustly detains; for this, to wit, that whereas the said *John* in the court of the lord *William* the third, now king of *England*, *Scotland*, *France* and *Ireland*, called the king's court in the kingdom of *Ireland*, before *Richard Pyne*, knt. and his companions; then justices of our said now lord the king of the bench of his kingdom of *Ireland*, in *Hillary* term in the 6th year of the reign of the said now lord the king; by the consideration of the same court did recover against the said *Richard Coote* 33*l.* 8*s.* 3*d.* which to the same *John*, with his assent, by the said court of the lord the king of his bench in the said kingdom of *Ireland*, were adjudged for his damages which he had as well by reason of a certain trespass and ejectment by the said *Richard* on the said *John* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said *John* is convicted, as by the record and proceedings thereof in the court of the said now lord the king before the king himself here, to wit, at *Westminster* in the county of *Middlesex* remaining; which the said now lord the king for certain reasons caused to be transmitted into the same court of the said now lord the king before the king himself, is more fully manifest and appears; which said judgment in the same court of the lord the king before the king himself here, to wit, at *Westminster* aforesaid in the county of *Middlesex* aforesaid, in its full strength and effect remains, not satisfied or discharged, and whereon the same *John* hath not yet sued out his execution for

Debt on three judgments for damages recovered in ejectment in *Ireland* and for costs on three writs of error.

[182]

the damages aforesaid; whereby an action accrued to the same *John* to demand and have of the said *Richard* the said 33*l.* 8*s.* 3*d.* part of the said 96*l.* 4*s.* 3*d.* And whereas also the same *John* lately in the court of the said now lord the king before the king himself, called the king's court in his kingdom of *Ireland*, by the consideration of the same court did recover against the said *Richard Cote* 18*l.* 16*s.* sterling, which to the same *John* were adjudged for his costs and damages which he had sustained by reason of the delay of execution of the judgment aforesaid, by the pretence of prosecuting a certain writ of the said lord the king to correct error in the judgment aforesaid, and that the same *John* should have thereof execution, &c. as by the record and proceedings of the same judgment last mentioned in the court of the said lord now the king before the king himself here, to wit, at *Westminster* aforesaid in the county of *Middlesex* aforesaid, now remaining, which the same lord the king for certain reasons caused to be transmitted into the same court of the said lord the king before the king himself here at *Westminster* in the county of *Middlesex*, is more fully manifest and appears; which said last mentioned judgment, to wit, in the same court of the said now lord the king before the king himself at *Westminster* aforesaid in the county of *Middlesex* aforesaid, in its full force and effect likewise remains, not satisfied or discharged; and the same *John* hath not yet sued out his execution for the said 18*l.* 16*s.* for the damages and costs aforesaid last mentioned; whereby an action likewise accrued to the same *John* to demand and have of the said *Richard* the same 18*l.* 16*s.* of the said 96*l.* 4*s.* 3*d.* other parcel: And whereas also the same *John* lately in the said court of the said now lord the king before the king himself, to wit, in *Hilary* term in the 9th year of the reign of the said now lord the king, the same court being then and yet at *Westminster* in the county of *Middlesex* aforesaid, by the consideration of the same court did recover against the said *Richard Cote* 44*l.* which to the same *John Lynch* by the court of the said now lord the king before the king himself then and there, to wit, at *Westminster* in the county of *Middlesex* aforesaid, according to the form of the statute in such case made and provided, were adjudged for his costs, charges and damages, which he had sustained by reason of the delay of execution of the judgment aforesaid, by the pretence of prosecuting a certain other writ of the said lord the king to correct error; and that the same *John Lynch* should have thereof execution, as by the record and proceedings thereof in the said court of the said now lord the king before the king himself here, to wit, at *Westminster* in the county of *Middlesex* aforesaid, remaining, more fully is manifest and appears; which said last mentioned judgment in the same court of the said lord the king here before the king himself at *Westminster* in the county of *Middlesex* in its full force and effect remains, not satisfied or discharged; and the same *John* hath not yet sued out his execution for the said 44*l.* for his costs, charges and damages last mentioned; whereby an action accrued to the same *John*

3 H. 7. 10.
19 H. 7. 20.

John to demand and have of the said *Richard* the same 44*l.* residue of the said 96*l.* 4*s.* 3*d.* Nevertheless the said *Richard*, altho' often required, &c. the said several sums of 32*l.* 8*s.* 3*d.* 18*l.* 16*s.* and 44*l.* in the whole amounting to 96*l.* 4*s.* 3*d.* hath not yet paid to the same *John*, but hath hitherto altogether refused and yet doth refuse to pay him the same, to the damage of the said *John* 20*l.* And therefore he produces the suit, &c.

When, &c. And as to the said 33*l.* 8*s.* 3*d.* in the declaration aforesaid first mentioned, parcel of the said 96*l.* 4*s.* 3*d.* the same *Richard* says that the said *John* ought not to have or maintain his action aforesaid thereof against him, because he says that there is not any such record of the recovery of the said 33*l.* 8*s.* 3*d.* against him the said *Richard*, as by his declaration aforesaid is above supposed: And this he is ready to verify: And as to the said 18*l.* 16*s.* in the declaration aforesaid second mentioned, other parcel of the said 96*l.* 4*s.* 3*d.* the same *Richard* says, that the said *John* ought not to have or maintain his action aforesaid thereof against him, because he says that there is not any such record of the recovery of the said 18*l.* 16*s.* against him the said *Richard*, as by the declaration aforesaid is farther likewise supposed: And this he is also ready to verify: And as to the said 44*l.* in the declaration aforesaid mentioned, residue of the said 96*l.* 4*s.* 3*d.* the same *Richard* says, that the declaration aforesaid as to the said 44*l.* and the matter in the same contained are not sufficient in law for the said *John* to have or maintain his action aforesaid thereof against him for the same, to which said declaration as to the said 44*l.* he the said *Richard* hath no necessity, nor is by the law of the land obliged, in any manner to answer: And this he is ready to verify: Wherefore, for want of a sufficient declaration in that behalf, the same *Richard* prays judgment, and that the said *John* may be precluded from his action aforesaid thereof against him therefore had; and for causes of demurrer in law in that behalf to that declaration as to the said 44*l.* the same *Richard* according to the form of the statute in such case lately made and provided doth set down and to the court here expresses these causes following, to wit, That the said 44*l.* to the same *John* by the court of the said lord the king before the king himself at *Westminster*, for his costs, charges and damages, by reason of the delay of execution of the judgment aforesaid by pretence of prosecuting the writ of error aforesaid, adjudged, are not recoverable by the law of the land of this kingdom of *England*, in the said court of the said lord the king before the king himself at *Westminster*, and that the declaration aforesaid as to the said 44*l.* is insensible, uncertain and wants form: And this the same *Richard* is ready to verify: Wherefore he prays judgment of the declaration aforesaid, and that the said declaration as to the said 44*l.* may be quashed, &c.

And the said *John* says, that he by any thing by the said *Richard* above in pleading alledged ought not to be precluded from his action aforesaid thereof against the said *Richard* had, because as

Plea to part no such record.

The like to other part.

Demurrer to the residue.

The causes

27 El. c. 5.

4 A. c. 16.

[183]

Repl. severally, that there is such record.

Joinder in de-
purrer.

to the said plea by the said *Richard* as to the said 33*l.* 8*s.* 3*d.* in the declaration aforesaid above first mentioned, parcel of the said 96*l.* 4*s.* 3*d.* above in bar pleaded, and the same *John* says, that there is such record of the recovery of the said 33*l.* 8*s.* 3*d.* against the said *Richard* in the said court of the said now lord the king here before the King himself, to wit, at *Westminster* in the county of *Middlesex* aforesaid, remaining, as the same *John* above thereof hath declared: And this he is ready to verify by that record, as the court of the said now lord the king here shall consider, &c. And thereupon the same *John* is order'd to have the record thereof before the said lord the king at *Westminster* on day next after at his peril: The same day is given to the said *Richard* there, &c. And as to the said plea by the said *Richard* as to the said 18*l.* 16*s.* in the declaration aforesaid second mentioned, other parcel of the said 96*l.* 4*s.* 3*d.* above in bar pleaded, the same *J.* likewise says, that there is such record of the recovery of the said 18*l.* 16*s.* against the said *Richard* in the said court of the said lord the king before the king himself here, to wit, at *Westminster* in the county of *Middlesex* aforesaid, remaining, as the same *John* above thereof hath declared: And this likewise he is ready to verify by that record, as the court of the said lord the king now here shall consider, &c. And thereupon the said *John* is likewise ordered to have the record thereof before the lord the king at *Westminster* on day next after at his peril: The same day is given to the said *Richard* there, &c. And as to the said matter in abatement of the declaration of the said *John* aforesaid, as to the said 44*l.* in the same declaration last mentioned, residue of the said 96*l.* 4*s.* 3*d.* by the said *Richard* above alledged, the same *J.* says, that by any thing before alledged the declaration of the said *J.* aforesaid as to the said 44*l.* ought not to be quashed, because he says that the declaration aforesaid as to the same 44*l.* and the matter in the same contained are good and sufficient in law for the said *J.* to maintain his action aforesaid thereof against the said *R.* therefore had, which said declaration as to the said 44*l.* and the matter in the same contained the same *J.* is ready to verify and prove, as the court, &c. And because the said *R.* doth not answer to that declaration as to the same 44*l.* nor hitherto any way deny the same, the same *J.* prays judgment and his debt aforesaid as to the same 44*l.* together with his damages by reason of the detention of that debt, to be adjudged to him, &c. But because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses; day thereof is given to the parties aforesaid before the lord the king at *Westminster* until day next after to hear their judgment of and upon the premisses aforesaid, because the court of the said lord the king now here thereof not yet, &c.

Jones at the suit of Hayes, widow.

AND the said *Margaret* by *John Allen* her attorney comes and defends the force and injury when, &c. and prays oyer of the writing obligatory aforesaid; and it is read to her; she likewise prays oyer of the condition of the same writing; and it is read to her in these words, to wit, the condition of the obligation is such, That if the above bounden *C. Dunster*, *D. Wright* and *M. Jones*, or any of them, their or any of their heirs, executors or administrators, do well and truly pay, or cause to be paid, unto the abovenamed *Elizabeth Hayes*, her executors, administrators or assigns, the full sum of 100 *l.* with lawful interest of good and lawful money of *Great Britain*, on the fifth day of *December* now nex ensuing; then this obligation to be void, or else to remain in full force and effect: Which being read and heard, the same *Marg.* says that she ought not to be charged with the debt aforesaid by virtue of the writing obligatory aforesaid, because she says that after the 29th day of *September* in the year of the Lord 1714, to wit, on the said fifth day of *July* in the year of the Lord 1718, at the parish of *St. Martin in the fields* aforesaid it was corruptly agreed between the said *Eliz.* and the said *Marg.* and *C. D.* and *D. W.* that the said *Eliz.* should accommodate and lend to the said *Margaret C.* and *D.* the sum of 100 *l.* and should give day for the payment thereof until the fifth day of *December* next ensuing; and that the said *Margaret, C.* and *D.* for the loan of the same 100 *l.* and for giving day for the payment thereof for the time aforesaid, should give and pay to the said *Elizabeth* the sum of 5 *l.* 5 *s.* upon the said fifth day of *December* then next following, for the interest and gain thereof, and for giving day for the payment of the same 100 *l.* which said 5 *l.* 5 *s.* exceed the rate of 5 *l.* for the interest of 100 *l.* for one whole year, against the form of the statute in such case made and provided: And afterwards, on the said fifth day of *July* in the year and place in the declaration abovementioned, the said *Elizabeth* in prosecution of the corrupt agreement aforesaid did accommodate and lend the said *Margaret C.* and *D.* the said 100 *l.* and the writing aforesaid, in the declaration aforesaid above specified, by the said *Margaret C.* and *D.* was sealed, and as their deed delivered to the same *Elizabeth*; and the same *Margaret C.* and *D.* then and there, to wit, on the said fifth day of *July* in the year and place in the declaration aforesaid above mentioned, did pay to the said *Elizabeth* the said sum of 5 *l.* 5 *s.* for the gain and interest of the said 100 *l.* and for giving day for the payment thereof on the said fifth day of *December* next ensuing, in performance and completion and according to the form and effect of the corrupt agreement aforesaid; whereby the writing aforesaid in the declaration aforesaid abovementioned, by force of the statute aforesaid in such case made and provided, is void in law: And this she is ready to verify: Wherefore she prays judgment if she ought to be charged with the debt aforesaid by virtue of the writing aforesaid, &c.

The statute of
usury pleaded.

[184]

12 A. c. 16.

Ed. Whitaker.

Repl. for a just
debt.

Traverse.

Rejoinder.

Issue on the tra-
verse.

A bill filed a-
gainst an attor-
ney of the C. B.
on bond.

Draft. Reg. 129.

The rule there-
on.

And the said *Elizabeth* says, that she by any thing by the said *Margaret* above in pleading alledged ought not to be precluded from her action afore said thereof against the said *Margaret* had, because she says, that the said *Margaret* the writing obligatory afore said, in the declaration afore said mentioned, to the same *Elizabeth* did make, seal, and as her deed deliver for a true and just debt to the same *Elizabeth* from the said *Margaret* due; without that, that it was corruptly agreed between the said *Elizabeth* and the said *Margaret*, and *C. Dunster* and *D. Wright*, in manner and form as the said *Margaret* above by pleading hath alledged: And this she is ready to verify: Wherefore she prays judgment and her debt afore said, together with her damages by reason of the detention of that debt, to be adjudged to her, &c.

And the said *Margaret* as before says, that it was corruptly agreed between the said *Elizabeth* and the said *Margaret* and *C. D.* and *D. W.* in manner and form as she the same *Margaret* above by pleading hath alledged: And of this she puts herself upon the country: And the said *Elizabeth* thereof likewise: Therefore let a jury thereon come before the lord the king at *Westminster* on day next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties afore said there, &c.

Midd', to wit. *Frances O.* widow, by *Robert B.* her attorney complains of *Robert P.* one of the attornies of the court of the lady the queen of the bench here, otherwise called *Robert P.* of the city of *L.* in the county of the same city, gent. present here in court in his proper person, for this, that he hath not render'd to the same *Frances* 120*l.* which he owes her and unjustly detains, &c. for this, to wit, that the said *Robert* on the 15th day of *July* in the third year of the reign of the lady *Anne*, now queen of *England*, at *Westminster* in the county of *Middlesex* afore said, by his certain writing obligatory acknowledged himself to be bound to the same *Frances* in the said 120*l.* to be paid to the same *Frances* when he should be thereto required. Nevertheless the said *Robert*, altho' often required, &c. the said 120*l.* to the same *Frances* hath not yet paid, but hath hitherto denied and yet doth deny to pay her the same; whereby the same *Frances* says that she is prejudiced, and hath damage to the value of 20*l.* And therefore she prays remedy, &c. And she produces here in court the writing afore said, which the debt afore said in form afore said testifies, the date whereof is the day and year above said, &c.

Unless the defendant shall appear on Saturday next after the morrow of the ascension of the Lord, let him be forejudged the court.

By the court.

Cocke.
Plas

Pleas before the lord the king at Westminster of Trinity term in the 11th year of the reign of the lord William the third, now king of England, &c.

Midd', to wit. **B**E it remember'd that otherwise, to wit, in *Easter* term last past, before the lord the king at *Westminster* came *Samuel D. gent.* by *J. L.* his attorney, and produced in the court of the said lord the king then there his certain bill against *John A. esq;* otherwise called *John A.* of the *Inner Temple, London, esq;* in the custody of the marshal, &c. in a plea of debt; and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit, *Middlesex, to wit, Samuel Davis, gent.* complains of *John A. esq;* otherwise called *John A.* of the *Inner Temple, London, esq;* being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, in a plea that he render to him 130*l.* of lawful money of *England* which he owes him and unjustly detains, for this, to wit, that whereas the said *John* on the 17th day of *April* in the year of the Lord 1695, at *Westminster* in the county aforesaid, by his certain writing obligatory sealed with the seal of the said *John*, and to the court of the said lord the king now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *Samuel* in the said 130*l.* to be paid to the same *Samuel* when he should be thereto after required: Nevertheless the said *John*, altho' often required, &c. the said 130*l.* to the said *Samuel* hath not yet paid, but hath hitherto altogether denied, and yet doth deny to pay him the same, to the damage of the said *Samuel* 20*l.* And therefore he produces the suit, &c.

The manner of making up the *Nisi prius* record for trial in *K. B.*

Debt on bond,

And now on this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *John* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Samuel* by his attorney aforesaid, as the said *John* by *J. M.* his attorney: And the same *John* defends the force and injury when, &c. and says, that he ought not to be charged with the debt aforesaid by virtue of the writing aforesaid, because he says, that that writing is not his deed: And of this he puts himself on the country: And the said *Samuel* thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after the octave of the Holy *Trinity*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Imparlance,

Not his deed,

Pleas

Repl. for a just
debt.

Traverse.

Rejoinder.

Issue on the tra-
verse.

A bill filed a-
gainst an attor-
ney of the C. B.
on bond.

Bract. Reg. 129.

The rule there-
on.

And the said *Elizabeth* says, that she by any thing by the said *Margaret* above in pleading alledged ought not to be precluded from her action aforesaid thereof against the said *Margaret* had, because she says, that the said *Margaret* the writing obligatory aforesaid, in the declaration aforesaid mentioned, to the same *Elizabeth* did make, seal, and as her deed deliver for a true and just debt to the same *Elizabeth* from the said *Margaret* due; without that, that it was corruptly agreed between the said *Elizabeth* and the said *Margaret*, and *C. Dunster* and *D. Wright*, in manner and form as the said *Margaret* above by pleading hath alledged: And this she is ready to verify: Wherefore she prays judgment and her debt aforesaid, together with her damages by reason of the detention of that debt, to be adjudged to her, &c.

And the said *Margaret* as before says, that it was corruptly agreed between the said *Elizabeth* and the said *Margaret* and *C. D.* and *D. W.* in manner and form as she the same *Margaret* above by pleading hath alledged: And of this she puts herself upon the country: And the said *Elizabeth* thereof likewise: Therefore let a jury thereon come before the lord the king at *Westminster* on day next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Midd', to wit. *FRANCES O.* widow, by *Robert B.* her attorney complains of *Robert P.* one of the attornies of the court of the lady the queen of the bench here, otherwise called *Robert P.* of the city of *L.* in the county of the same city, gent, present here in court in his proper person, for this, that he hath not render'd to the same *Frances* 120*l.* which he owes her and unjustly detains, &c. for this, to wit, that the said *Robert* on the 15th day of *July* in the third year of the reign of the lady *Anne*, now queen of *England*, at *Westminster* in the county of *Middlesex* aforesaid, by his certain writing obligatory acknowledged himself to be bound to the same *Frances* in the said 120*l.* to be paid to the same *Frances* when he should be thereto required. Nevertheless the said *Robert*, altho' often required, &c. the said 120*l.* to the same *Frances* hath not yet paid, but hath hitherto denied and yet doth deny to pay her the same; whereby the same *Frances* says that she is prejudiced, and hath damage to the value of 20*l.* And therefore she prays remedy, &c. And she produces here in court the writing aforesaid, which the debt aforesaid in form aforesaid testifies, the date whereof is the day and year above said, &c.

Unless the defendand shall appear on Saturday next after the morrow of the ascension of the Lord, let him be forejudged the court.

By the court.

Cocke.
Plas

Pleas before the lord the king at Westminster of Trinity term in the 11th year of the reign of the lord William the third, now king of England, &c.

Midd', to wit. **B**E it remember'd that otherwise, to wit, in *Easter* term last past, before the lord the king at *Westminster* came *Samuel D.* gent. by *J. L.* his attorney, and produced in the court of the said lord the king then there his certain bill against *John A.* esq; otherwise called *John A.* of the *Inner Temple, London*, esq; in the custody of the marshal, &c. in a plea of debt; and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit, *Middlesex*, to wit, *Samuel Davis*, gent. complains of *John A.* esq; otherwise called *John A.* of the *Inner Temple, London*, esq; being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, in a plea that he render to him 130*l.* of lawful money of *England* which he owes him and unjustly detains, for this, to wit, that whereas the said *John* on the 17th day of *April* in the year of the Lord 1695, at *Westminster* in the county aforesaid, by his certain writing obligatory sealed with the seal of the said *John*, and to the court of the said lord the king now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *Samuel* in the said 130*l.* to be paid to the same *Samuel* when he should be thereto after required: Nevertheless the said *John*, altho' often required, &c. the said 130*l.* to the said *Samuel* hath not yet paid, but hath hitherto altogether denied, and yet doth deny to pay him the same, to the damage of the said *Samuel* 20*l.* And therefore he produces the suit, &c.

The manner of making up the *Nisi prius* record for trial in *K. B.*

Debt on bond,

And now on this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *John* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Samuel* by his attorney aforesaid, as the said *John* by *J. M.* his attorney: And the same *John* defends the force and injury when, &c. and says, that he ought not to be charged with the debt aforesaid by virtue of the writing aforesaid, because he says, that that writing is not his deed: And of this he puts himself on the country: And the said *Samuel* thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after the octave of the Holy *Trinity*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Imparlanee.

Not his deed.

Pleas before the lord the king at Westminster of Trinity term in the 11th year of the reign of the lord William the third, now king of England, &c.

The Jurata in debt,

Midd', to wit. **T**HE jury between *Samuel Davis*, gent, by his attorney, plaintiff, and *John A.* esq; otherwise called *John A.* of the Inner Temple, London, esq; defendant, in a plea of debt, is put in respite before the lord the king at Westminster until Tuesday next after three weeks of the Holy Trinity, unless the trusty and well beloved of the lord the king *John Holt*, knt. chief justice of the lord the king, assigned to hold pleas in the court of the said lord the king before the king himself, on Monday next after three weeks of the Holy Trinity at Westminster in the great hall of pleas there, by the form of the statute, &c. shall first come for want of jurors, &c. Therefore let the sheriff have the bodies, &c. The same day is given to the parties aforesaid there, &c.

Farmer against Rogers.

Debt on a lease at will.

North'ton, to wit. **R**ichard Rogers the elder, late of the parish of *Daventry* in the county aforesaid, husbandman, was summoned to answer *Edward Farmer*, gent, in a plea that he render to him 100*l.* which he owes him and unjustly detains: And whereon the same *Edward* by *W. L.* his attorney says, that whereas the said *Edward* on the 29th day of September in the year of the Lord 1698, at the parish of *Daventry* aforesaid, did demise and to farm let unto the said *Richard* a messuage and four rods of land lying and being in the parish of *Daventry* aforesaid, and also one other rod of land lying and being, &c. with the appurtenances, except out of the said demise to the said *Edward F.* all that little close of pasture called the *Goads Close*, &c. To hold to the said *Richard* (except before excepted) from thenceforth as long as both the parties aforesaid should please; Yielding and paying therefore to the said *E.* as long as the said *Richard* the demised premises aforesaid (except before excepted) should have and enjoy, after the rate of 50*l.* of lawful money of England by the year, to be paid at the two most usual feasts, to wit, at the feast of the annunciation of the blessed virgin *Mary* and of St. *Michael* the archangel, by even and equal portions; by virtue of which said demise the said *Richard* into the demised premises aforesaid (except before excepted) entered, and was therefore possessed, and for one whole year from thence next ensuing continued thereof possessed, and 50*l.* of the rent aforesaid, parcel of the said 100*l.* for the said one year ended at the feast of St. *Michael* the archangel last past, to the same *E.* were in arrear and yet are in arrear and unpaid; whereby an action accrued to the same *E.* to demand and have of the said *R.* the said 50*l.* parcel of

[186]

Preach.

of the said 100*l.* Nevertheless the said *R.* altho' often required, &c. the said 50*l.* parcel of the said 100*l.* hath not yet paid to the said *E.* but hath altogether denied and yet doth deny to pay him the same: And whereas also the said *E. F.* on the said 29th day of *September* in the year of the Lord 1698 abovesaid, at *D.* abovesaid, did demise and to farm let to the said *R.* one other messuage, &c. with their appurtenances; To have and to hold the last mentioned tenements abovesaid with the appurtenances to the same *R.* from thenceforth as long as both the parties abovesaid should please; Yielding and paying therefore to the said *E.* as long as the said *R.* the last mentioned demised premisses abovesaid should hold and enjoy, after the rate of 50*l.* of lawful money of *England* by the year at the two most usual feasts, to wit, the feast of the annunciation of the blessed virgin *Mary* and *St. Michael* the archangel, by even and equal portions: By virtue of which said demise the same *R.* afterwards, to wit, on the first day of *October* in the year of the Lord 1698 abovesaid last mentioned, into the demised premisses abovesaid with the appurtenances entered, and was thereof possessed, and for one whole year from thence next ensuing continued thereof possessed, and 50*l.* of the rent abovesaid, residue of the said 100*l.* for the said one year ended at the feast of *St. Michael* the archangel last past, to the same *E.* were in arrear and yet are in arrear and unpaid; whereby an action accrued to the same *E.* to demand and have of the said *R.* the said 50*l.* residue of the said 100*l.* Nevertheless the said *R.* altho' often required, &c. the said 50*l.* residue of the said 100*l.* hath not yet paid to the said *E.* but hath altogether denied and yet doth deny to pay him the same, to the damage of the said *E.* 50*l.* And therefore he produces the suit, &c.

Laid over again,

Breach.

Micbell at the suit of Rolfe.

WHEN, &c. And says that the said *John Rolfe* ought not to have or maintain his action abovesaid thereof against him, because he says, that he ought not to be charged with the debt abovesaid by virtue of the writing obligatory abovesaid, because he says, that he the said *John Micbell* on the 27th day of *May* in the 12th year of the reign of the lord *William* the third, late king of *England*, &c. at *London* abovesaid in the parish of *St. Mary-le-bow* in the ward of *Cheap*, the writing abovesaid made and sealed, and to one *Evan Brown* as an escrow safely to be kept on the condition following then and there delivered, to wit, if the said *John Rolfe* on the 20th day of *June* in the year abovesaid, at *London* abovesaid in the parish and ward abovesaid, should deliver to one *Stephen Brown* 100 yards of woollen cloth called *Carfes*, and 200 yards of linen cloth, in good and merchantizable condition, to be exported by the said *Stephen* in the ship, called the *Fisher*, to *Virginia* in parts beyond the seas, that then the said *Evan Brown* the writing obligatory abovesaid to

Plea that the bond was delivered as an escrow.

Co. Lit. 303.
9 Co. 137.
Pract. Reg.
317, 542.

Pleas before the lord the king at Westminster of Trinity term in the 11th year of the reign of the lord William the third, now king of England, &c.

The Jurata in debt,

Midd', to wit. **T**HE jury between *Samuel Davis*, gent. by his attorney, plaintiff, and *John A.* esq; otherwise called *John A.* of the *Inner Temple*, *London*, esq; defendant, in a plea of debt, is put in respite before the lord the king at *Westminster* until *Tuesday* next after three weeks of the *Holy Trinity*, unless the trusty and well beloved of the lord the king *John Holt*, knt. chief justice of the lord the king, assigned to hold pleas in the court of the said lord the king before the king himself, on *Monday* next after three weeks of the *Holy Trinity* at *Westminster* in the great hall of pleas there, by the form of the statute, &c. shall first come for want of jurors, &c. Therefore let the sheriff have the bodies, &c. The same day is given to the parties aforesaid there, &c.

Farmer against Rogers.

Debt on a lease at will.

North'ton, to wit. **R**ichard Rogers the elder, late of the parish of *Daventrie* in the county aforesaid, husbandman, was summoned to answer *Edward Farmer*, gent. in a plea that he render to him 100*l.* which he owes him and unjustly detains: And whereon the same *Edward* by *W. L.* his attorney says, that whereas the said *Edward* on the 29th day of *September* in the year of the Lord 1698, at the parish of *Daventrie* aforesaid, did demise and to farm let unto the said *Richard* a messuage and four rods of land lying and being in the parish of *Daventrie* aforesaid, and also one other rod of land lying and being, &c. with the appurtenances, except out of the said demise to the said *Edward F.* all that little close of pasture called the *Goads Close*, &c. To hold to the said *Richard* (except before excepted) from thenceforth as long as both the parties aforesaid should please; Yielding and paying therefore to the said *E.* as long as the said *Richard* the demised premises aforesaid (except before excepted) should have and enjoy, after the rate of 50*l.* of lawful money of *England* by the year, to be paid at the two most usual feasts, to wit, at the feast of the annunciation of the blessed virgin *Mary* and of *St. Michael* the archangel, by even and equal portions; by virtue of which said demise the said *Richard* into the demised premises aforesaid (except before excepted) entered, and was therefore possessed, and for one whole year from thence next ensuing continued thereof possessed, and 50*l.* of the rent aforesaid, parcel of the said 100*l.* for the said one year ended at the feast of *St. Michael* the archangel last past, to the same *E.* were in arrear and yet are in arrear and unpaid; whereby an action accrued to the same *E.* to demand and have of the said *R.* the said 50*l.* parcel of

[186]

Preach.

of the said 100*l.* Nevertheless the said *R.* altho' often required, &c. the said 50*l.* parcel of the said 100*l.* hath not yet paid to the said *E.* but hath altogether denied and yet doth deny to pay him the same: And whereas also the said *E. F.* on the said 29th day of *September* in the year of the Lord 1698 above said, at *D.* afore said, did demise and to farm let to the said *R.* one other messuage, &c. with their appurtenances; To have and to hold the last mentioned tenements afore said with the appurtenances to the same *R.* from thence forth as long as both the parties afore said should please; Yielding and paying therefore to the said *E.* as long as the said *R.* the last mentioned demised premisses afore said should hold and enjoy, after the rate of 50*l.* of lawful money of *England* by the year at the two most usual feasts, to wit, the feast of the annunciation of the blessed virgin *Mary* and *St. Michael* the archangel, by even and equal portions: By virtue of which said demise the same *R.* afterwards, to wit, on the first day of *October* in the year of the Lord 1698 above said last mentioned, into the demised premisses afore said with the appurtenances entered, and was thereof possessed, and for one whole year from thence next ensuing continued thereof possessed, and 50*l.* of the rent afore said, residue of the said 100*l.* for the said one year ended at the feast of *St. Michael* the archangel last past, to the same *E.* were in arrear and yet are in arrear and unpaid; whereby an action accrued to the same *E.* to demand and have of the said *R.* the said 50*l.* residue of the said 100*l.* Nevertheless the said *R.* altho' often required, &c. the said 50*l.* residue of the said 100*l.* hath not yet paid to the said *E.* but hath altogether denied and yet doth deny to pay him the same, to the damage of the said *E.* 50*l.* And therefore he produces the suit, &c.

Laid over again,

Breach.

Micbell at the suit of Rolfe.

WHEN, &c. And says that the said *John Rolfe* ought not to have or maintain his action afore said thereof against him, because he says, that he ought not to be charged with the debt afore said by virtue of the writing obligatory afore said, because he says, that he the said *John Micbell* on the 27th day of *May* in the 12th year of the reign of the lord *William* the third, late king of *England*, &c. at *London* afore said in the parish of *St. Mary-le-bow* in the ward of *Cheap*, the writing afore said made and sealed, and to one *Evan Brown* as an escrow safely to be kept on the condition following then and there delivered, to wit, if the said *John Rolfe* on the 20th day of *June* in the year above said, at *London* afore said in the parish and ward afore said, should deliver to one *Stephen Brown* 100 yards of woollen cloth called *Carfes*, and 200 yards of linen cloth, in good and merchandizable condition, to be exported by the said *Stephen* in the ship, called the *Fisher*, to *Virginia* in parts beyond the seas, that then the said *Evan Brown* the writing obligatory afore said

Plea that the bond was delivered as an escrow.

Co. Lit. 303.

9 Co. 137.

Pract. Reg.

317, 540.

to

And so not his
deed.
Salk. 274.

to the said *John Rolfe* as the deed of the said *John Michell* should deliver, and otherwise not: And the said *John Michell* says, that the said *John Rolfe* on the 20th day of *June* in the year abovesaid did not deliver to the said *Stephen* the said 100 yards of woollen cloth or the 200 yards of linen cloth: And so the same *John Michell* says, that the writing obligatory aforesaid here in court produced by the said *John Michell*, in form aforesaid delivered, the condition aforesaid not being performed, is not his deed: And this he is ready to verify: Wherefore he prays judgment, if the said *John Rolfe* ought to have or maintain his action aforesaid thereof against him, &c.

Demurrer.

[187]

The causes.
27 El. 5.
4 A. c. 16.

And the said *John Rolfe* says, that he by any thing by the said *John Michell* above in pleading alledged ought not to be precluded from his action aforesaid thereof against the said *John Michell* had, because he says, that the plea aforesaid by the said *John Michell* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *John Rolfe* from his action aforesaid thereof against the said *John Michell* had, to which said plea he the same *John Rolfe* hath no necessity, nor is by the law of the land obliged, in any manner to answer: And this he is ready to verify: Wherefore for want of a sufficient answer in this behalf, he the same *John Rolfe* prays judgment and his debt aforesaid, together with his damages by reason of the detention of that debt, to be adjudged to him, &c. And for causes of demurrer in law in this behalf the same *John Rolfe*, according to the form of the statute in such case lately made and provided, doth set down and to the court here express, That the said *John Michell* doth not conclude his plea aforesaid to the country as he ought, and that the said plea is not issuable, and wants form, &c.

St. John Brodrick.

Joinder in de-
murrer.

And the said *John Michell* says, that the plea aforesaid by him the said *John Michell* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to preclude the said *John Rolfe* from his action aforesaid thereof against him the said *John Michell* had; which said plea, and the matter in the same contained, he the same *John Michell* is ready to verify and prove, as the court, &c. And because the said *John Rolfe* doth not answer to that plea, nor hitherto any way deny the same, he the same *John Michell* as before prays judgment, and that the said *John Rolfe* may be precluded from his action aforesaid thereof against him the said *John Michell* had, &c. But because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premisses, day thereof is given to the parties aforesaid before the lady the queen at *Westminster* until day next after to hear their judgment of and upon those premisses,

premisses, because the court of the said lady the queen now here thereof not yet, &c.

Bond and Butler.

Midd., to wit. **E** *Lizabeth Bond*, widow, administratrix of all and singular the goods and chattels, rights and credits, which belonged to *James Goodwin*, gent. deceased, unadministrated by *James Bond* also deceased, late administrator of the said *James Goodwin*, complains of *James Butler*, esq; otherwise called *James Butler* of the parish of St. *James* within the liberty of *Westminster* in the county of *Middlesex*, esq; in the custody of the marshal, &c. in a plea that he render to her 300*l.* of lawful money of *England*, which he unjustly detains from her, for this, to wit, that whereas the said *James Butler* on the 5th day of *May* in the year of the Lord 1715, at *Westminster* in the county aforesaid, by his certain writing obligatory sealed with the seal of him the said *James Butler*, and to the court of the said lady the queen now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the same *James Goodwin* in his life-time in the said 300*l.* to be paid to the same *James Goodwin* when he should be thereto required: Nevertheless the said *James Butler*, although often required, &c. the said 300*l.* to the said *James Goodwin* in his life-time, or to the said *James Bond* in his life-time after the death of the said *James Goodwin*, or to the same *Elizabeth* after the death of the said *James Bond*, (to which said *Elizabeth*, after the several deaths of the said *James Goodwin* and *James Bond*, administration of all and singular the goods and chattels, rights and credits, which belonged to the said *James Goodwin* at the time of his death by *James Bond* unadministrated, by *William* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England*, in due form of law was committed), or to any of them, hath not paid, but the same to the said *James Goodwin* in his life-time, or to the said *James Bond* in his life-time, or to the same *Elizabeth* after the death of the said *James Bond*, hath altogether denied to pay, and the same to the said *Elizabeth Bond* doth yet deny to pay, and unjustly detains, to the damage of the said *Elizabeth Bond* 20*l.* And therefore she produces the suit, &c. And the same *Elizabeth Bond* produces here in court the letters of administration aforesaid, which the commission of the administration aforesaid in form aforesaid testify, the date whereof is the day and year abovesaid, &c.

Debt by an administratrix de bonis non, &c.

Smith against Crawford, esq;

Midd., to wit. **J** *James Smith* complains of *David Crawford*, esq; marshal of the *Marshalsey* of the lord the king before the king himself, being present here in court in his proper person, in a plea that he render to him 35*l.* of lawful

Debt against the marshal of the king's bench for an escape out of execution.

[188]
The recovery in
C. B.

Ha' Cor.

Commitment
thereon in execution.

lawful money of *Great Britain*, which he owes him and unjustly detains, for this, to wit, that whereas the said *James*, by the name of *J. S.* otherwise, to wit, in *Trinity* term in the 5th year of the reign of the lord *George* now king of *Great Britain, &c.* in the court of the said lord the king of the bench, before *P. King*, knt. and his companions, then justices of the said lord the king of the same bench at *Westminster*, did recover against one *William Granville* otherwise *Glanville* late of *London*, esq; 35*l.* as well for his damages which he had sustained by reason of the nonperformance of certain promises and assumptions of the said *William* to the same *James* lately made, as for his costs and charges about his suit in that behalf expended, whereof the said *William* is convicted, as by the record and proceedings thereof remaining in the same court of the said lord the king of the bench more fully is manifest and appears: And afterwards, to wit, on the 23d day of *December* in the sixth year of the reign of the said lord the now king, by virtue of a certain writ of the said now lord the king to have the body with the cause out of the court of the said lord the king before the king himself, being at *Westminster* aforesaid in the county of *Middlesex* aforesaid, duly issued, bearing date at *Westminster* 28th day of *November* in the fifth year aforesaid, to the then mayor, aldermen and sheriffs of *London* directed, the said *William* was brought in custody by *J. E.* bart. and *J. T.* knt. being then sheriffs of *London* aforesaid, before *R. E.* knt. one of the justices of the said lord the king assigned to hold pleas in the court of the said lord the king before the king himself, at his chamber situate in *Serjeants-Inn* in *Chancery-lane*, *London*, in the parish of *St. Dunstan* in the *West* in the ward of *Farringdon Without*, and then and there by the return of the said writ of *Ha' Cor'* was charged among other things in execution at the suit of him the said *James Smith*, for the damages, costs and charges aforesaid, and afterwards, to wit, the same 23d day of *December* in the year aforesaid, at *London* aforesaid in the parish aforesaid, was by the same justice committed to the custody of the marshal of the *Marshalsey* of the said lord the king before the king himself, charged among other things in execution for the damages, costs and charges aforesaid, as by the record of the said writ to have the body of the said *William* and the return thereof, and the commitment of the said *William* in execution, remaining filed in the court of the said now lord the king before the king himself, more fully is manifest and appears: By virtue of which said commitment the said *David C.* being then and yet as aforesaid marshal of the *Marshalsey* aforesaid, the said *William* into his custody then and there received, and him the said *William* in execution for the damages, costs and charges aforesaid, under his custody by virtue of the same commitment had and detained; and the said *William* being in the custody of the said *David C.* marshal of the *Marshalsey* aforesaid, in execution for the damages, costs and charges

charges aforesaid, in form aforesaid, the said *David C.* afterwards, to wit, 24th day of *December* in the sixth year of the reign of the said now lord the king, he the said *David C.* being then and yet, as aforesaid, marshal of the *Marshalsey* aforesaid, at *Westminster* aforesaid in the county of *Middlesex* aforesaid, the said *W. Granvile* otherwise *Glanvile* out of the custody of him the said *David C.* freely and voluntarily suffered to escape and go at large where the same *William* pleased, without the licence and against the will of him the said *James Smith* (the said *James* being then or yet not satisfied or paid the damages, costs and charges aforesaid, or any part thereof); whereby an action accrued to the said *James* to demand and have of the said *David Crawford* the said 35*l.* Nevertheless the said *David*, altho' often required, &c. the said 35*l.* to the same *James* hath not yet paid, but hath hitherto altogether denied and yet doth deny to pay him the same, to the damage of the said *James* 20*l.* And therefore he produces the suit, &c.

The escape.

The defendant pleaded the general issue; the plaintiff obtained a verdict, and the marshal paid the money.

Dower.

[189]

Holmden, widow, against Gregory.

Kent, to wit. *Joan Holmden*, widow, who was the wife of *William Holmden*, by *J. B.* her attorney demands against *Mary Gregory*, spinster, the moiety of one messuage, one barn, one stable, one garden, three orchards, 30 acres of land, 15 acres of meadow, 15 acres of pasture, and two acres of wood with the appurtenances in *Chislehurst* and *Footscray*, as the dower of the said *Joan* of the endowment of the said *William* her late husband, by the writ of the lord the king of dower, whereof she hath nothing, &c. And that the tenements aforesaid with the appurtenances are of the tenure and nature of gavelkind, and according to the custom in the county aforesaid from time immemorial used and approved, women, who are dowerable of tenements held in gavelkind, after the death of their husbands ought to be endowed of the moiety of the same tenements with the appurtenances, &c.

Dower of the moiety of gavelkind lands.

Spiller and Andrew.

Otherwise as it appears in *Trinity* term last past in the *Roll* 1875, it is contained thus: *Dorset*, to wit. *Brent Reynell Spiller*, esq; and *Mary* his wife (who was the wife of *Solomon Andrew*

Dower of the third part of a messuage, &c.

Parl. Rep. 69,
72.
Pract. Reg. 467,
489, 494.

Andrew deceased) by *W. B.* their attorney demand against *Sarah* *Andrew* the third part of 32 messuages, four stables, one garden, four orchards, 57 acres of meadow, 53 acres of pasture, and 6*l.* 1*s.* 4*d.* rent, with the appurtenances in the borough of *Lime Regis* and *Cokway* in the parish of *Lime Regis*, and *Catherston Lewson* in the parish of *Whitchurch*, which they claim as her dower of the endowment of the said *Solomon* her late husband, by the writ of the lord the king of dower, whereof she hath nothing, &c.

Bar by guardian,
Ready to render,
&c.

Imparlance.

Judgment to re-
cover seisin.

And no amerce-
ment, because,
&c.

nor any value
nor damages.

And the said *Sarah* by *J. E.* who is admitted by the court of the lord the king here to prosecute for the same *Sarah* who is under age, as guardian of the said *Sarah*, comes and says, that she from the time of the death of the said *Solomon* late husband, &c. always hitherto was and yet is ready to render to the said *Mary* her dower afore said: And this she is ready to verify: Wherefore she prays judgment if the said *Brent Reynell Spiller* and *Mary* ought to have any damages against her by reason of the detention of her dower afore said, &c. And upon this the said *Brent Reynell Spiller* and *Mary* pray leave to imparl thereto here until from the day of *St. Michael* in three weeks; and they have, &c. The same day is given to the said *Sarah* here, &c. On which day here come the said *Brent Reynell Spiller* and *Mary* by their attorney afore said, and the said *Sarah* by her guardian afore said; and the said *Brent Reynell Spiller* and *Mary* farther pray leave to imparl thereto here until in the octave of *St. Hillary*; and they have, &c. The same day is given to the said *Sarah* here, &c. On which day here come the said *Brent Reynell Spiller* and *Mary* by their attorney afore said, and the said *Sarah* by her guardian afore said: And because the said *Brent Reynell Spiller* and *Mary* do not deny the plea afore said of the said *Sarah*, therefore it is considered, that the said *Brent Reynell Spiller* and *Mary* recover their seisin against the said *Sarah* of the third part afore said with the appurtenances, and nothing of amercement of the said *Sarah*, because she came the first day by summons, &c. And upon this the same *Brent Reynell Spiller* and *Mary* say, that the said *Solomon*, late husband, &c. died seised of the tenements afore said with the appurtenances whereof, &c. in his demean as of fee, and pray the writ of the lord the king as well to cause them to have full seisin of the 3d part afore said with the appurtenances, as to inquire of damages, &c. And because by the confession of the said *Sarah* above made it appears to the court here, that the same *Sarah* always from the death of the said *S.* until the day of the issuing of the original writ of them the said *Brent Reynell Spiller* and *M.* to wit, the 30th day of *May* in the 1st year of the reign of the now lord the king, was ready to render to the said *M.* her dower of the tenements afore said with the appurtenances; wherefore the same *Brent Reynell Spiller* and *M.* ought not to recover any value of the 3d part of those tenements, nor their damages by reason of the detention of her dower afore said, from the death of the said *S.* late husband of the said *M.* until the day of the issuing of the original writ

writ of them the said *Brent Reynell Spiller* and *M.* against the said *Sarah*: And it seems to the said justices here, that the said *Brent Reynell Spiller* and *M.* ought to recover against the said *Sarah* as well the value of the 3d part of the tenements aforesaid with the appurtenances, as their damages by reason of the detention of her dower aforesaid from the said day of the issuing of the original writ aforesaid, if, &c. Therefore the sheriff is commanded to cause the said *Brent Reynell Spiller* and *M.* to have their full seisin of the third part of the tenements aforesaid with the appurtenances, and to inquire diligently by the oaths of good and law fulmen of his county if the said *S.* died seised of the tenements aforesaid with the appurtenances in his demean as of fee-simple or of fee-tail; and if by that inquisition he shall so find, then by their oaths to inquire diligently how much the tenements aforesaid with the appurtenances are worth by the year in all issues beyond reprises, according to the true value of the same, as also what damages the said *Brent Reynell Spiller* and *M.* have sustained as well by reason of the detention of her dower aforesaid from the said day of the issuing of the original writ aforesaid beyond the value aforesaid, as for their costs and charges by them about their suit in this behalf expended: And the inquisition which he shall so make thereof to certify here from the day of the Holy Trinity in three weeks, &c. under the seal, &c. and the seals, &c. On which day here come the said *Brent Reynell Spiller* and *M.* by their attorney aforesaid; and the sheriff did nothing therein, nor returned the writ: Therefore as before let another writ be made to him therof in form aforesaid, returnable here from the day of St. Michael in three weeks, &c. On which day here come the said *Brent Reynell Spiller* and *M.* by their attorney aforesaid: And the sheriff, to wit, *Nicholas Cary*, esq; now returns the writ aforesaid, together with a certain schedule, and a certain inquisition before him by the oaths of twelve, &c. taken, to the same writ annexed, in these words, to wit, *Dorset*, to wit, An inquisition indented, taken at *Lyme Regis* in the county aforesaid on the fifth day of September in the third year of the reign of our Lord George now king of Great Britain, &c. and in the year of the Lord 1716, before me *Nicholas Cary*, esq; sheriff of the county aforesaid, by virtue of the writ of the said lord the king to me directed, and to this inquisition annexed, by the oaths of *S. Courtney*, *J. Gundry*, &c. good and lawful men of my county, who say upon their oaths, that the within named *Solomon Andrew* died seised in his demean as of fee of and in one messuage called the *George Inn*, one stable and one close of meadow called, &c. (naming several particulars) situate, lying and being in *Catherston Lewson* in the parish of *Whitchurch* in the county aforesaid, and of and in 5l. 19s. 4d. issuing from and out of the following messuages in *Lyme Regis* aforesaid, to wit, of 10s. rent issuing from and out of a messuage in the tenure, of *A. R.* of 10s. rent issuing from and out of a messuage in the tenure of *J. N.* of 10s. rent issuing from and out of a messuage in the tenure of *F. S.*

Writ of seisin and inquiry awarded.

The inquisition

That the husband died seised in fee.

The value.

The damages
from the suing
out the original.

[191]

of 10*s.* rent issuing from and out of a messuage in the tenure of *J. H.* of 10*s.* rent issuing from and out of a messuage in the tenure of *R. S.* of 10*s.* rent issuing from and out of a messuage in the tenure of *W. P.* of 10*s.* rent issuing from and out of a messuage in the tenure of *G. R.* of 8*s.* rent issuing from and out of a messuage in the tenure of *J. P.* of 6*s.* 1*d.* rent issuing from and out of a messuage in the tenure of *R. D.* of 8*s.* rent issuing from and out of a messuage in the tenure of *R. C.* of 1*l.* rent issuing from and out of a messuage in the tenure of *S. O.* and of and in the reversion of the same messuages after the expiration or sooner determination of certain terms of years thereof respectively granted; and that the said *S.* did not die seised of any other messuages, lands or tenements, to the knowledge of the same jurors: And the jurors aforesaid on their oaths farther say, that the tenements and premisses above named with the appurtenances are of the clear yearly value, in all issues beyond reprises, of 60*l.* 11*s.* 3*d.* and that the said *Brent Reynell Spiller*, esq; and *M.* his wife, in the writ aforesaid named, have sustained damages by reason of the detention of the dower within specified from the said day of the issuing of the writ original within mentioned beyond the value aforesaid to 10*l.* 5*s.* 11*d.* and for their costs and charges by them about their suit in that behalf expended to 10*s.* In witness whereof as well I the said sheriff as the jurors aforesaid have to this inquisition interchangeably set our seals, the day, year and place aforesaid: And I do farther humbly certify to the justices of the lord the king at *Westminster*, that by virtue of the writ aforesaid I did on the 12th day of *October* in the 3d year of the reign of the said now lord the king, &c. cause the said *Brent* and *Mary* to have full seisin of the 3d part of the tenements and rents aforesaid with the appurtenances, to wit, of the said messuage with the appurtenances called the *George-Inn* in the tenure of *A. B.* the said messuage with the appurtenances, &c. of the said 10*s.* rent issuing from and out of the said messuage in the tenure of *A. R.* of the said 10*s.* rent issuing from and out of the said messuage in the tenure of *J. T.* of the said 10*s.* rent issuing from and out of the said messuage in the tenure of *F. S.* of 9*s.* 9*d.* $\frac{1}{4}$ rent parcel of the said 10*s.* rent issuing from and out of the said messuage in the tenure of *J. H.* and also of the reversion of the four messuages last mentioned, after the expiration or sooner determination of the said term of years thereof respectively granted with the appurtenances, to hold to the said *Brent* and *Mary* in severalty by metes and bounds as the dower of the said *Mary*, of the endowment of the said *Solomon Andrew* her late husband, as by the writ aforesaid I am commanded.

Nicholas Cary, esq; sheriff.

And because the justices here will advise themselves of and upon the premisses before they give judgment thereon, day is given to the said *Brent Reynell Spiller* and *Mary* here until in the

octave of St. *Hillary* to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here come the said *Brent Reynell Spiller* and *Mary* by their attorney afore said: And upon this the premisses being seen and by the justices here more fully understood, it is considered, that the said *Brent Reynell Spiller* and *Mary* recover against the said *Sarah* as well the value of the third part afore said from the said day of the issuing of the original writ afore said, which amounts to 31*l.* 13*s.* 4*d.* as their damages afore said to 10*l.* 15*s.* 11*d.* by the inquisition afore said in form afore said found, as also 12*l.* 10*s.* 9*d.* to the same *Brent Reynell Spiller* and *Mary* at their request for their costs and charges afore said by them about their suit in this behalf expended, by the court here of increase adjudged, which said value and damages in the whole amount to 55*l.* &c.

Judgment to recover the value of the land and costs.

Ejectment.

Smith against Farmer.

Ejectment for a messuage, cottage, land, meadow and pasture, moiety of a manor, fair and market, toll, &c. thereto belonging.

Leicester, to wit. **W**illiam Farmer late of *Glooston* in the county aforesaid, yeoman, was attached to answer *George Smith* in a plea, why with force and arms into five messuages, 20 cottages, 400 acres of land, 200 acres of meadow and 400 acres of pasture, with the appurtenances in *Welham Slawston, Harberowe and Bowden Magna*, and the moiety of the manor of *Harberowe* aforesaid with the appurtenances, and also the moiety of the fairs and markets of *Harberowe* aforesaid, of all tolls, stallages, piccages, pontages and other perquisites, profits, customs and privileges to the same manor, fairs and markets belonging and appertaining, which *John Dowley* demised to the same *George* for a term which is not yet past, he entered, and from his farm aforesaid ejected him, and committed other outrages upon him, to the great damages of the said *George*, and against the peace of the lord and lady the now king and queen, &c. And whereon the same *George* by *W. P.* his attorney complains, that whereas the said *John* on the 10th day of *October* in the third year of the reign of the lord and lady the now king and queen, &c. at *Welham* did demise to the same *George* the tenements, premises and moiety aforesaid with the appurtenances; To have and to hold to the same *George* and his assigns from the 29th day of *September* then last past unto the end and term of seven years from thence next ensuing and fully to be compleat and ended: By virtue of which said demise the same *George* into the tenements, premises and moiety aforesaid with the appurtenances entered, and was thereof possessed; and he the said *George* being so thereof possessed, the said *William Farmer* afterwards, to wit, on the said 10th day of *October* in the third year of the reign of the said now lord and lady the king and queen, &c. aforesaid, with force and arms into the tenements, premises and moiety aforesaid with the appurtenances, which the said *John* to the same *George* in form aforesaid demised for the term aforesaid, which is not yet past, entered, and him from his farm aforesaid ejected, and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 40*l.* And therefore he produces the suit, &c.

Underbill

Underhill against Durham.

Worcester, to wit. *John Durham* late of *Willersley* in the county of *Gloucester*, yeoman, was attached to answer *John Underhill* in a plea, why with force and arms three messuages, 500 acres of land, 200 acres of meadow, and 200 acres of pasture with the appurtenances in *Treddington* in the county of *Worcester* aforesaid, he broke and entred, and him the said *John Underhill* from the possession and occupation of the same tenements so expelled and amoved for a long time kept out, and also all the issues and profits of the same tenements of the yearly value of 200*l.* for all the time aforesaid, to the proper use of him the said *John Durham* received and had, and committed other outrages upon him, to the great damage of the said *John Underhill*, and against the peace of the now lord the king, &c. And whereon the same *John Underhill* by *J. S.* his attorney complains, that the said *John Durham* on the first day of *June* in the tenth year of the reign of the now lord the king, with force and arms three messuages, five hundred acres of land, 200 acres of meadow, and 200 acres of pasture with the appurtenances in *Treddington* in the county of *Worcester*, broke and entred, and him the said *John Underhill* from the possession and occupation of the same tenements expelled and amoved, and the same *John Underhill* from the possession and occupation of the said tenements so expelled and amoved for a long time, to wit, from the said first day of *June* in the 10th year abovesaid until the day of the issuing of the original writ of him the said *John Underhill*, kept out, and also all the issues and profits of the same tenements of the yearly value, &c. for all the time aforesaid, to the proper use of him the said *John Durham* received and had, and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 40*l.* And therefore he produces suit, &c.

Declaration of the mesne profits in an ejectment tried at bar. M. 11. W. 3. Pract. Reg. 499.

[193]

And the said *John Durham* by *J. Lilly* his attorney comes and defends the force and injury when, &c. and prays oyer of the writ aforesaid; and it is read to him in these words, to wit, *William*, &c. To the sheriff of *Worcester* greeting: If *John Underhill* shall give you security to prosecute his suit, then put by surety and safe pledges *John Durham* late of *Willersley* in the county of *Gloucester*, yeoman, that he be before us from the day of *Easter* in one month wherever we shall be in *England*, to shew why with force and arms three messuages, 500 acres of land, 200 acres of meadow, and 200 acres of pasture with the appurtenances in *Treddington* in your county, he broke and entred, and him the said *John Underhill* from the possession and occupation of the said tenements expelled and amoved, and the same *John Underhill* from the possession and occupation of the said tenements so expelled and amoved for a long time kept out, and also all the issues and profits of the same tenements of the yearly value

Abatement.

No such writ in
the register.

Common bar
because the
plaintiff doth
not name the
clofes.
2 Co. 18 b.
Pract. Reg.
596, 602.

value of 200*l.* for all the time aforesaid to the proper use of him the said *John Durham* received and had, and committed other outrages upon him, to the great damage of him the said *John Underhill*, and against our peace; and have there the names of the pledges, and this writ. *Witness* ourself at *Westminster* the 12th day of *April* in the 12th year of our reign: Which being read and heard, the same *John Durham* prays judgment of the writ aforesaid, because he says, that there is not any such form of a writ of trespass in the register of writs as the form of the writ aforesaid, and that that writ varies from the said register of writs in this, that it doth not appear that the messuages and lands were the messuages and lands of the said *John Underhill*: And this he is ready to verify: Wherefore he prays judgment of the writ aforesaid, and that the said writ may be quashed, &c. *This plea on demurrer was over-ruled.*

And the said *John Durham* by *J. L.* his attorney comes and defends the force and injury when, &c. And as to the coming with force and arms the said *John Durham* says that he is not guilty thereof: And of this he puts himself upon the country: And the said *John Underhill* thereof likewise, &c. And as to the residue of the trespass aforesaid above supposed to be committed, the same *John Durham* says, that the said *John Underhill* ought not to have or maintain his action aforesaid thereof against him, because he says, that the messuages aforesaid, as also the places aforesaid in which the trespass aforesaid is above supposed to be committed, are and at the time when the said trespass is supposed to be committed were one messuage called *White-house*, one other messuage called *Black-house*, one other messuage called *Red-house*, and 500 acres of land called *Black-lands*, 200 acres of meadow called *White-lands*, and 200 acres of pasture called *Red-lands*, with the appurtenances in *Treddington* aforesaid in the county aforesaid; which said tenements with the appurtenances are and at the said time when, &c. and also for all the time aforesaid in the declaration aforesaid mentioned, were the proper grounds and freehold of him the said *John Durham*: Wherefore the said *John Durham* at the time when, &c. and also for all the time aforesaid in the declaration aforesaid mentioned, the said several messuages and parcels of land, meadow and pasture, as the proper messuages, lands, meadow and pasture of him the said *John Durham*, being in the possession of the said *John Durham*, broke and entred, and the possession and occupation of the same for all the time aforesaid in the declaration aforesaid mentioned kept, and the issues and profits of the same messuages and tenements for all the time aforesaid in the declaration aforesaid mentioned received and had, as he lawfully might. And this the same *John Durham* is ready to verify: Wherefore he prays judgment if the said *John Underhill* ought to have or maintain his action aforesaid thereof against him, &c.

Edw. Northey.

Lucas

Lucas and Legawe.

AND the said *John* by *B. H.* his attorney comes and defends the force and injury when, &c. and says nothing in bar or preclusion of the action aforesaid of him the said *Lawrence*, whereby the same *Lawrence* remains against the said *John* therein undefended, &c. Therefore it is consider'd, that the said *Lawrence* recover against the said *John* his term yet to come of and in the rectory and tenements aforesaid with the appurtenances: It is also considered, that the said *Lawrence* ought to recover his damages against the said *John* by reason of the premises: And upon this the said *Lawrence* freely here in court remits to the said *John* all and all manner of damages, costs and charges, which he the same *Lawrence* hath sustained by reason of the premises, or which in this behalf may be adjudged, and all and all manner of judgments and executions to be had of or for the same; therefore the said *John* from those damages, costs and charges, may be quiet, &c. Whereupon the sheriff is commanded without delay to cause the said *Lawrence* to have his possession of his term aforesaid yet to come of and in the rectory and tenements aforesaid with the appurtenances, and to certify how that precept shall be executed to the lady the queen from the day of *Easter* in 15 days wherever, &c. The same day is given to the said *Lawrence*, &c.

Nil dicit in ejectment.

Judgment to recover the term and damages.

The damages remitted.

Writ of possession awarded.

AND the said *Lawrence* by *B. H.* his attorney comes and defends the force and injury when, &c. and says nothing in bar or preclusion of the action of the said *John*, but hath made default, whereby the same *John* remains against the said *Lawrence* undefended, &c. Therefore it is considered, that the said *John* ought to recover his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances, and his damages by reason of the premises against the same *Lawrence*: Whereupon the sheriff is commanded to cause without delay the said *John* to have his possession of his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances, and to certify how that precept shall be executed to the said lord the king at *Westminster* on day next after The same day, &c.

Nil dicit.

Otherwise.

Possession awarded.

Yorke against Jordan and others.

Hill. 10 W. 3. Roll. 1478. C. B.

Kent, to wit. *John Jordan*, late of *Lydd* in the county aforesaid, carpenter, *John Mittel*, late of the same, grafter, and *Thomas Hamond*, late of the same, butcher, were attached to answer *James Yorke*, gent. in a plea, why they with force and arms one messuage, two barns, and 55 acres of fresh marsh with the appurtenances in *Lydd*, which *Richard Stronghill* gent.

Ejectment for lands in Kent on the demise of *Ri. Stronghill*.

Parl. Rep. 18 108, 140.

gent. demised to the same *James* for a term which is not yet past, entred, and him from his farm aforesaid ejected, and committed other outrages upon him, to the great damages of the said *James*, and against the peace of the now lord the king, &c. And whereon the same *James* by *N. N.* his attorney complains, that the said *Richard* on the 7th of *October* in the 9th year of the reign of the now lord the king, at *Maidstone* in the county aforesaid, demised to the same *James* the tenements aforesaid with the appurtenances; To have and to hold the tenements aforesaid, with the appurtenances, to the same *James* and his assigns from the 29th day of *September* then last past unto the end and term of five years from thence next ensuing and fully to be compleat and ended: By virtue of which demise the same *James* into the tenements aforesaid with the appurtenances entred, and was thereof possessed; and he the said *James* being so thereof possessed the said *John Jordan*, *John Mittell* and *Thomas*, afterwards, to wit, the same 7th day of *October* in the 9th year above said with force and arms, &c. into the tenements aforesaid with the appurtenances, which the said *Richard* to the same *James* demised in form aforesaid for the term aforesaid, which is not yet past, entred, and him the said *James* from his farm aforesaid ejected, and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 20*l.* And therefore he produces the suit, &c.

Not guilty.

[195]

13 E. 1. c. 30.

12 E. 2. c. 4.

14 E. 3. c. 16.

The Poſtea.

And the said *John Jordan*, *John Mittell* and *Thomas*, by *J. W.* their attorney come and defend the force and injury when, &c. and say, that they are not guilty of the trespass and ejectment aforesaid, as the said *James* above against them complains: And of this they put themselves on the country: And the said *James* likewise: Therefore the sheriff is commanded to cause to come here in the octave of the purification of the blessed *Mary* twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. On which day the jury between the parties aforesaid was put thereof between them in respite here until this day, to wit, from the day of *Easter* in fifteen days, unless the justices of the lord the king, assigned to take assises in the county aforesaid by the form of the statute, &c. on *Tuesday* the 21st day of *March* last past at *Maidstone* in the county aforesaid, had first came: And now here on this day come as well the said *James* as the said *John Jordan*, *John Mittell* and *Thomas* by their attornies aforesaid: And the said justices of assise before whom, &c. have sent here their record in these words: Afterwards, the day and year within contained, before *J. Holt*, knt. chief justice of the lord the king, assigned to hold pleas before the king himself, *Eldred Lancelot Lee* this time associated to the same *John Holt*, and *Edward Nevill*, knt. one of the justices of the said lord the king of the bench, and *Nicholas Lechmeere*, knt. one of the barons of the exchequer of the said lord the king, justices of the

the said lord the king assigned to take assises in the county of *Kent* by the form of the statute, &c. the presence of the said *Edward Nevill* and *Nicholas Lechmere* being not expected, by virtue of the writ of the said lord the king of *Si non omnes*, &c. come as well the within named *James Yorke* as the within written *John Jordan*, *John Mittell* and *Thomas Hammond* by their attornies within contained: And the jurors of the jury, whereof mention is within made, being called likewise come, who being elected, tried, and sworn to say the truth of the within contained, say upon their oath, that long before the within written time of the trespass and ejectment within supposed to be committed, one *John Stronghill*, esq; was seised of the tenements within written with the appurtenances in the declaration within written mentioned (among others) in his demean as of fee, having issue *Henry* his son and heir apparent in his last will mentioned; and being so thereof seised on the 17th day of *June* in the year of the Lord 1665 made his last will and testament in writing, and by his same last will gave and bequeathed (among other things) in these words following, to wit, *First*, I give and bequeath to my son *Henry Stronghill*, during his natural life, all and every my messuages, lands tenements and hereditaments whatsoever, or of what sort or kind soever, situate, lying and being in the towns, parishes, villages or hamlets of *Ludd*, *New Rumney*, *New Church Hope* and *Riverton*, or any of them, or elsewhere wheresoever in the county of *Kent* (whereof the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned are parcel); And after the decease of my said son *Henry*, I give and bequeath all and singular my said lands, messuages and premises to the first issue male of the body of my said son *Henry* lawfully to be begotten, and to the heirs of the body of such issue male lawfully begotten; And if it shall happen that such issue shall die without heirs of his body begotten as aforesaid, I in like manner give and bequeath all and every my said messuages, lands, tenements and hereditaments aforesaid, to the second issue male of the body of my said son *Henry* lawfully to be begotten, and to the heirs of the body of such second issue male; and for default of such heirs, to the third, fourth, fifth, sixth and seventh, and every issue male of the body of my said son *Henry* begotten as aforesaid, and the respective heirs of their respective bodies lawfully begotten, one after another, as they shall be in seniority of age one before the other, and the elder still to be in order before the younger: And if it shall happen my said son *Henry* shall die without any issue male of his body begotten as aforesaid, I hereby give and bequeath all and every of my said messuages, lands, tenements, hereditaments and premises, to the heirs female of the body of my said son *Henry* lawfully begotten as aforesaid, and to the heirs of the body of such issue female lawfully to be begotten, to be equally divided amongst such issue female and to their heirs for ever: But if it shall

The jury find, that one *John Stronghill* was seised in fee of the premises, and devised them to his son *Henry* for life, remainder to his 1st son in tail, &c.

John Strongbill
died seised.

Henry entered,
and by lease and
release (before
issue) conveyed
them to *Short*
and *Norris* to
the use of *Ju-*
ditb Strongbill
for her life, and
after to the use
of *Henry* in fee.

[196]

happen my said son *Henry* to die without any issue male or female, then my will and meaning is, and I do give and bequeath all and every my said messuages, lands, tenements, hereditaments and premisses, to be equally divided among my three daughters, *Judith Strongbill*, *Bridget Strongbill* and *Constance Strongbill*, and to the heirs of their bodies lawfully to be begotten for ever; as by the last will aforesaid to the jurors aforesaid shewn in evidence more fully appears: And the jurors aforesaid on their oath aforesaid farther say, that the said *John Strongbill* afterwards, to wit, on the first day of *September* in the year of the Lord 1665, of such his estate of and in the tenements aforesaid with the appurtenances (whereof the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned are parcel) died seised; after whose death the said *Henry Strongbill* into the tenements aforesaid with the appurtenances (whereof the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned are parcel) entered, and was thereof seised as the law requires: And the same jurors on their oath aforesaid farther say, that the said *Henry Strongbill* so as aforesaid being seised, and before he had any issue of his body lawfully begotten, to wit, on the 23d day of *October* in the year of the Lord 1676, by a certain indenture made between him the said *Henry Strongbill* of the one part, and *Thomas Short* and *William Norris* of *London*, gent. of the other part, bearing date the same day and year, in consideration of 5*s.* in the indenture aforesaid mentioned to be by the said *T. Short* and *William Norris* to him the said *Henry Strongbill* paid, he the said *Henry Strongbill* did demise to the said *Thomas Short* and *William Norris* the tenements aforesaid in the declaration aforesaid mentioned with the appurtenances; To have and to hold to the same *Thomas Short* and *William Norris* from the day next before the day of the date of the said indenture for one whole year from thence next ensuing, as by the indenture aforesaid to the jurors aforesaid in evidence shewn more fully appears: By virtue whereof they the said *Thomas Short* and *William Norris* into the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned entered, and were thereof possessed for the term aforesaid; and being so thereof possessed afterwards, to wit, on the 24th day of the same month of *October* in the year of the Lord last aforesaid, by a certain indenture *quadripartite* made between him the said *Henry Strongbill* of the first part, the said *Thomas Short* and *William Norris* of the second part, one *William Loxe* of *Chiswicke* in the county of *Middlesex*, gent. of the third part, and *Judith Strongbill* of *London*, widow, relict of the said *John Strongbill* and mother of the said *Henry Strongbill*, of the fourth part, bearing date the same day and year, he the said *Henry Strongbill* granted, remised, released, quit-claimed and confirmed to the said *Thomas Short* and *William Norris* and their heirs, then being in their actual possession (among other things) the tenements aforesaid with the appurtenances

appurtenances in the declaration aforesaid mentioned; To have and to hold to the said *Thomas Short* and *William Norris*, their heirs and assigns, to the use of the said *Judith Stronghill* and her assigns, for and during the term of her natural life; and after the decease of the said *Judith*, to the use of the said *Henry Stronghill*, his heirs and assigns for ever: And the same jurors on their oath aforesaid farther say, that in the said indenture last mentioned is contained this clause following, to wit, And for the better corroboration of these presents, and for the barring, cutting off, and wholly extinguishing of all and all manner of estates-tail, and other estates and remainders limited, made, done or executed, of, in or concerning the premises, or any part thereof, by the said *John Stronghill* deceased, or by any other person or persons, it is covenanted, concluded and fully agreed by and between all the said parties to these presents, that the said *Thomas Short* and *William Norris*, and their heirs, shall and will permit and suffer the said *William Lowe* to bring and pursue against them the said *Thomas Short* and *William Norris* one or more writ or writs of entry on *Disseisin in le post*, returnable before his majesty's justices of the court of common pleas at *Westminster* before the end of this present *Michaelmas* term, by which he the said *William Lowe* shall demand against them the said *Thomas Short* and *William Norris* the said messuages, closes, lands, tenements, wood-grounds and premises aforesaid by such name or names, quantities, qualities and other distinctions and descriptions as to the said *William Lowe* shall seem meet; to which said writ or writs the said *Thomas Short* and *William Norris* shall appear *gratis*, or by their attorney in that behalf to be lawfully authorised, and shall enter into the warranty, and shall vouch to warranty the said *Henry Stronghill*, who shall also appear and enter into the warranty of the said premises, and shall vouch over the common vouchee, which common vouchee shall also appear to the warranty for the said premises, and after make default, so that a good and perfect common recovery with double voucher may be duly had and executed of the said messuages, lands and tenements, according to the usual and common order and form of common recoveries for assurance of lands in such cases used: And lastly, it is agreed by all the said parties to these presents, and hereby declared to be their true intent and meaning, that the said common recovery so or in any other manner to be had and suffered of the premises, or of any part thereof, shall be and enure, and shall be construed, deemed and taken to be and enure to the uses, intents and purposes herein before mentioned and declared, and to and for no other use, intent or purpose whatsoever; as by the indenture aforesaid to the jurors aforesaid in evidence shewn more fully appears: By virtue of which said indentures of demise and release last mentioned the same *Judith* into the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned entered, and was thereof seised

And for the cutting off all estates-tail *Short* and *Norris* shall permit *Lowe* to bring a *Præcipe* against them.

They shall vouch *Henry*, who shall vouch the common vouchee.

The uses.

Judith entered.

Writ of entry
fued out against
Short and Nor-
ris.

[197]

They appear
and vouch
Henry,

who vouches
the common
vouchee.

seised as the law requires: And the jurors aforesaid on their oath aforesaid farther say, that in pursuance of the indenture last mentioned the said *William Lowe*, gent. on the 23d day of the same *October*, out of the court of chancery of the lord *Charles* the second, late king of *England*, &c. prosecuted against the said *Thomas Short* and *William Norris* a certain writ of the said lord the king of entry on *Disseisin in le post*, returnable before the justices of the said lord the king of the bench at *Westminster* in the county of *Middlesex* on the morrow of *St. Martin* then next following, by which said writ the said *William Lowe* demanded against the said *Thomas Short* and *William Norris* the tenements aforesaid with the appurtenances in the said declaration mentioned (among other things) by the name of three messuages, three gardens, and ten acres of fresh marsh with the appurtenances in *New Rumney*, *Old Rumney*, *Ludd*, *Rumney Marsh*, *New Church Hope*, *All Saints* and *Riverton*, as his right and inheritance; and in which the same *Thomas Short* and *William Norris* had not had entry but after the disseisin which *Hugh Hunt* thereof unjustly and without judgment had made on the said *William Lowe* within 30 years, &c. And whereon he said, that he himself was seised of the tenements aforesaid with the appurtenances in his demean as of fee and right in the time of peace in the time of the said late lord the king, by taking thereof the esplees to the value, &c. and in which, &c. And therefore he produced the suit, &c. And the said *Thomas Short* and *W. Norris* came and defended his right when, &c. And called thereof to warranty the said *Henry Stronghill*, who was then present in court in his proper person and freely warranted to them the tenements aforesaid with the appurtenances, &c. And upon that the said *W. Lowe* demanded against the said *Henry* tenant by his warranty the tenements aforesaid with the appurtenances in form aforesaid: And whereon he said, that he himself was seised of the tenements aforesaid with the appurtenances in his demean as of fee and right in the time of peace in the time of the late lord the king, by taking thereof the esplees to the value, &c. and in which, &c. And therefore he produced the suit, &c. And the said *Henry* tenant by his warranty defended his right when, &c. and farther called thereof to warranty *J. Wheeler*, who likewise was then present in court in his proper person, and freely warranted to him the tenements aforesaid with the appurtenances, &c. And thereupon the said *W. Lowe* demanded against the said *J. Wheeler* tenant by his warranty the tenements aforesaid with the appurtenances in form aforesaid, &c. And whereon he said, that he himself was seised of the tenements aforesaid with the appurtenances in his demean as of fee and right in time of peace in the time of the said late lord the king, by taking thereof the esplees to the value, &c. and in which, &c. And therefore he produced the suit, &c. And the said *J. Wheeler* tenant by his warranty defended his right when, &c. And said, that the said *Hugh* did not disseise

disseise the said *W. Lowe* of the tenements aforesaid with the appurtenances, as the said *William* by his writ and count aforesaid above supposed: And upon this he put himself on the country, &c. And the said *W. Lowe* prayed leave to imparl thereto, and had, &c. And afterwards the said *W. Lowe* came back into court in the same term in his proper person; and the said *J. Wheeler*, altho' solemnly called, did not come back, but departed in contempt of the court and made default: Therefore it was considered that the said *W. Lowe* should recover his seisin against the said *Thomas* and *W. Norris* of the tenements aforesaid with the appurtenances, and that the same *Thomas* and *W. Norris* should have of the land of the said *Henry* to the value, &c. And that the same *Henry* should have over of the land of the said *J. Wheeler* to the value, &c. and that the said *J. Wheeler* should then be in mercy, &c. And thereupon the said *W. Lowe* prayed the writ of the said late lord the king to the sheriff of the county aforesaid to be directed, to cause him to have full seisin of the tenements aforesaid with the appurtenances; and it was granted him returnable then without delay, &c. Afterwards, to wit, on the 28th day of *November* in that same term, came then into court the said *W. Lowe* in his proper person; and the sheriff, to wit, *J. Cutler*, knt. and bart. then returned, that he, by virtue of that writ to him directed, on the 23d day of *November* then last past, had caused the said *W. Lowe* to have full seisin of the tenements aforesaid with the appurtenances, as by that writ he was commanded: And the same jurors farther on their oath aforesaid say, that afterwards, to wit, on the 1st day of *May* 1678, and not before, the said *Henry Stronghill* had issue of his body lawfully begotten the within named *Richard Stronghill* the lessor of the plaintiff his first begotten and only son: And the same jurors on their oaths aforesaid farther say, that the said *Judith* afterwards, to wit, on the 1st day of *May* 1679 died so as aforesaid seised; after whose death the said *Henry* into the tenements aforesaid with the appurtenances whereof, &c. entered, and was thereof seised as the law requires: And afterwards, to wit, on the 10th day of *August* 1681, the said *Henry* being so as aforesaid seised by a certain indenture made between him the said *Henry Stronghill* of the one part, and *John Sympsen* of the *Inner Temple London*, knt. of the other part, for and in consideration of 5s. of lawful money of *England* in the indenture aforesaid mentioned to be by the said *John Sympsen* to him the said *Henry Stronghill* paid, he the said *Henry Stronghill* did demise, bargain and sell to the said *John Sympsen* the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned (among other things); To have and to hold to the said *John Sympsen* from the feast of *St. John* the baptist last past before the date of the indenture aforesaid for the term of six months from thence next ensuing, as by the indenture aforesaid to the jurors aforesaid in evidence shewn more fully appears: By virtue whereof he the

Writ of seisin awarded;

returned.

Then *Henry* had issue the lessor of the plaintiff.

Judith died and *Henry* entered, and conveyed to *Sympsen* by lease and release.

said

[198]

A covenant to
suffer recovery
thereupon.

faid *John Sympson* into the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned entered, and was thereof possessed for the same term; and being so thereof possessed afterwards, to wit, on the 11th day of the same month of *August* in the year of the Lord last aforesaid, by a certain indenture made between him the faid *Henry Stronghill* of the one part, and the faid *John Sympson* of the other part, bearing date the same day and year, in consideration of the sum of 900*l.* of lawful money of *England* by the faid *John Sympson* to him the faid *Henry Stronghill* paid, he the faid *Henry Stronghill* did grant, bargain, sell, release and confirm to the faid *John Sympson* and his heirs (then being in his actual possession, among others), the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned; To have and to hold to the faid *John Sympson*, his heirs and assigns, to the only proper use and behoof of the faid *John Sympson*, his heirs and assigns for ever: And the jurors aforesaid on their oath aforesaid farther say, that in the said indenture last mentioned are contained the clauses following, to wit, And the faid *Henry Stronghill* for himself, his heirs, executors and administrators, and for every of them, doth farther covenant, promise and grant to and with the faid *Sir John Sympson*, his heirs and assigns, for the farther and better granting and assuring the said several pieces and parcels of fresh marsh-grounds, lands, wood-grounds, tenements and hereditaments, and all other the premises, and every part and parcel thereof, with their and every of their appurtenances, unto the faid *Sir John Sympson*, his heirs and assigns, for the intent aforesaid, that he the faid *Henry Stronghill* shall and will before the end of *Michaelmas* term next ensuing the date of these presents, upon the request of the faid *Sir John Sympson*, and at the costs and charges of him the faid *Henry Stronghill*, suffer or cause to be suffered one or more good and perfect common recovery or recoveries before the judges of his majesty's court of common pleas at *Westminster*, according to the usual and common order and form of common recoveries for assurances of lands in such cases used; and also that he the faid *Henry Stronghill* shall and will from time to time, and at all times hereafter within the space of one year next ensuing the date of these presents, and upon the request of the faid *Sir John Sympson*, and at the costs and charges in the law of him the faid *Henry Stronghill*, his heirs and assigns, make, do, acknowledge, levy, suffer and execute, or cause to be made, done, acknowledged, levied, executed and suffered, all and every such farther and other lawful and reasonable act and acts, deed and deeds, conveyances and assurances in the law whatsoever, for the farther and better granting, conveying and assuring the said several pieces or parcels of fresh marsh-grounds, lands, wood-grounds, tenements and hereditaments, and all other the premises, and every part and parcel thereof, with their and every of their appurtenances, unto the faid *Sir John Sympson*, his heirs

heirs and assigns for ever, be it by one or more fine or fines, common recovery or recoveries, with single or double voucher or vouchers, feoffment, release with warranty, or by any other lawful ways or means whatsoever, as by the said Sir *John Symyson*, his heirs or assigns, or by his or their counsel learned in the law, shall be reasonably devised, advised or required, so that the party or parties, that by the force of this covenant shall be to make such farther assurances, be not for the doing thereof compelled or compellable to travel or go farther than the cities of *London* or *Westminster* for doing of the same; which said fine or fines, recovery or recoveries, conveyances and assurances of the premisses heretofore made, or hereafter to be made of the premisses, with the appurtenances, shall be and enure, and shall be adjudged, deemed, construed and taken to be and enure, to the only use and behoof of the said Sir *John Symyson*, his heirs and assigns for ever, and to and for no other use, intent or purpose whatsoever, as by the indenture aforesaid to the jurors aforesaid in evidence shewn more fully appears: And the jurors aforesaid on their oath aforesaid farther say, that one *Francis Twysden*, esq; out of the court of chancery of the lord *Charles* the second, late king of *England*, prosecuted against him the said *John Symyson* a certain writ of the said lord the king of entry on *Disseisin in le post*, returnable before the justices of the said lord the king of the bench at *Westminster* in the county of *Middlesex* from the day of *St. Michael* in three weeks then next following, by which said writ the said *Francis Twysden* demanded against the said *John Twysden* the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned (among others) by the name of one messuage, one garden, 120 acres of land, 30 acres of wood, 120 acres of fresh marsh with the appurtenances in the parish of *New Church, Ludd* and *Riverton*, as his right and inheritance, and into which the said *John* had not entry but after the disseisin, which *Hugh Hunt* thereof unjustly and without judgment made on the said *Francis* within thirty years, &c. And whereon he said, that he himself was seised of the tenements aforesaid with the appurtenances in his demesne as of fee and right in the time of peace in the time of the said then lord the king, by taking thereof the esplees to the value, &c. And in which, &c. And therefore he produced the suit, &c. And the said *John* in his proper person came and defended his right when, &c. and called thereof to warranty the said *Henry Strongbill*, gent. who was then present in court in his proper person, and freely the tenements aforesaid with the appurtenances to the said *John* warranted; and thereupon the said *Francis* demanded against him the said *Henry* tenant by his warranty the tenements aforesaid with the appurtenances in form aforesaid; and whereon he said, that he himself was seised of the tenements aforesaid with the appurtenances in his demesne as of fee and right in the time of peace in the time of the said then lord the king,

The uses.

Recovery sued against *John Symyson*.

Who vouched *Henry Strongbill*.

[199]

Who vouched
the common
vouchee.

Writ of seisin.

The return.

Sympson entered
and died seised.

Thomas Sympson
his son and heir
entered.

king, by taking the esplees thereof to the value, &c. And in which, &c. And therefore he produced the suit, &c. And the said *Henry*, tenant by his warranty, defended his right when, &c. and farther called thereof to warranty *J. Wheeler*, who was then likewise present in court in his proper person, and freely the tenements aforesaid with the appurtenances to the said *Henry* warranted, &c. And thereupon the said *Francis* demanded against the said *J. Wheeler* tenant by his warranty the tenements aforesaid with the appurtenances in form aforesaid, &c. And whereon he said, that he himself was seised of the tenements aforesaid with the appurtenances in his demesne as of fee and right in the time of peace in the time of the said then lord the king, by taking the esplees thereof to the value, &c. And in which, &c. And therefore he then produced the suit, &c. And the said *J. Wheeler* tenant by his warranty defended his right when, &c. and said that the said *Hugh* did not disseise the said *Francis* of the tenements aforesaid with the appurtenances, as the same *Francis* by his writ and count aforesaid above supposed: And of this he put himself upon the country: And thereupon the said *Francis* prayed leave to imparl, and had, &c. And afterwards the said *Francis* came back then into court in that same term in his proper person; and the said *J. Wheeler*, altho' solemnly called, did not return, but in contempt of the court departed and made default: Therefore it is considered, that the said *Francis* should recover his seisin against the said *J. Sympson* of the tenements aforesaid with the appurtenances, and that the same *J. Sympson* should have of the land of the said *Henry* to the value, &c. and that the same *Henry* should farther have of the land of the said *J. Wheeler* to the value, &c. And the same *J. Wheeler* in mercy, &c. And thereupon the said *Francis* prayed the writ of the said late lord the king, to the sheriff of the county aforesaid to be directed, to cause him to have full seisin of the tenements aforesaid with the appurtenances; and it was granted him, returnable in the morrow of *St. Martin* then next: On which day before the said justices of the said late lord the king at *Westminster* came the said *Francis* in his proper person; and the sheriff, to wit, *G. Atkins*, esq; then returned, that he by virtue of the said writ to him directed, had on the 31st day of *October* then last past caused the said *Francis* to have full seisin of the tenements aforesaid with the appurtenances, as he was by that writ commanded: By virtue whereof the same *J. Sympson* into the tenements aforesaid with the appurtenances (whereof the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned are parcel) entered, and was thereof seised, as the law requires; and being so thereof seised afterwards, to wit, on the first day of *May* 1683 died so thereof seised, after whose death the tenements aforesaid with the appurtenances whereof, &c. descended to *T. Sympson*, the only son and heir of him the said *J. Sympson*; by virtue whereof the same *T. Sympson* the son into the tenements aforesaid with the appurtenances whereof, &c. entred, and was thereof seised as the law requires:

requires: And afterwards, to wit, on the 16th day of *November* 1683, the said *T. Sympfson* being so as aforesaid seised, by a certain indenture tripartite, made between them the said *H. Stronghill* and *T. Sympfson* of the first part, *H. Oxenden*, esq; by the name of *H. Oxenden* of *Deane* in the parish of *Wingham* in the county of *Kent*, esq; of the second part, and *G. Oxenden*, by the name of *G. Oxenden* of *Doctors Commons*, *London*, doctor of laws, and *R. Oxenden* of *Grays Inn* in the county of *Middlesex*, esq; of the third part, bearing date the same day and year, for and in consideration of the sum of 5*s.* of lawful money of *England* in the indenture aforesaid mentioned, to be to them the said *H. Stronghill* and *T. Sympfson* paid, they the said *H. Stronghill* and *T. Sympfson* bargained and sold to the said *G. Oxenden* and *R. Oxenden* the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned (among other); To have and to hold to the same *G.* and *R.* from the day next before the day of the date of the indenture aforesaid for the term of one year from thence next ensuing, to the intent that by virtue of the indenture aforesaid, and by force of the statute for transferring uses into possession, the said *G.* and *R.* might be in the actual possession of the premises whereof, &c. and enabled to take a grant and release of the reversion and inheritance thereof to them the said *G.* and *R.* and their heirs, to the uses, intents and purposes, to be limited, expressed and declared, as by the indenture aforesaid to the jurors aforesaid in evidence shewn more fully appears: By virtue whereof they the said *G. Oxenden* and *R. Oxenden* into the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned entred, and were thereof possessed for the term aforesaid; and being so thereof possessed afterwards, to wit, on the 17th day of *November* in the year last aforesaid, by a certain indenture tripartite made between them the said *H. S.* and *T. S.* of the first part, the said *H. O.* of the second part, and *G. O.* and *R. O.* of the third part, bearing date the same day and year, in consideration of 995*l.* 5*s.* of lawful money of *England* by the said *H. O.* to him the said *T. S.* and of 844*l.* 15*s.* of like lawful money of *England* by the said *H. O.* to him the said *Henry Stronghill* paid, they the said *Thomas Sympfson* and *Henry Stronghill* granted, bargained, sold, aliened, released and confirmed to the said *George Oxenden* and *Richard Oxenden*, then in their actual possession (among others) the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned; To have and to hold to the said *George Oxenden* and *Richard Oxenden*, their heirs and assigns for ever: And the same jurors on their oath aforesaid farther say, that in the indenture aforesaid last mentioned is contained this clause following, to wit, And the said *Henry Stronghill* and *Thomas Sympfson* for themselves severally, and for their several heirs and assigns, do covenant and grant to and with the said *George Oxenden* and *Richard Oxenden*, and their heirs and assigns, and every of them, by these presents, that they the said *Henry Stronghill* and *Thomas Sympfson*, and their heirs,

And he and
Henry Stronghill
by bargain, sale
and release con-
vey to *G.* and *R.*
Oxenden in fee.
27 H. S. c. 10.

[200]

Covenant for
farther assurance

and also all and every other person and persons lawfully having or claiming, or which shall or may at any time hereafter have or lawfully claim any estate, title or interest, of, in or to the premises hereby granted, or of, in or to any part or parcel thereof, by, from or under them, or the said Sir *John Sympson*, or any or either of them, shall and will from time to time and at all times hereafter, for and during the space of seven years next after the date of these presents, at and upon the reasonable requests, costs and charges in the law of the said *George Oxenden* and *Richard Oxenden*, their heirs and assigns, or some of them, do, make, levy, execute and acknowledge, and suffer or cause to be made, done, acknowledged, levied, executed and suffered, all and every such farther and other lawful act and acts, thing and things, device and devices, assurance and assurances, conveyance and conveyances in the law whatsoever, for the better and more perfect assurance, surety, sure-making and conveying, settling, establishing and confirmation of the said several pieces or parcels of fresh marsh-grounds, lands, tenements, wood-grounds, hereditaments and premises hereby bargained and sold, or mentioned to be hereby bargained and sold, or any of them, and of every part and parcel thereof, with all and singular their and every of their appurtenances, unto the said *George Oxenden*, and *Richard Oxenden*, their heirs and assigns, according to the true intent and meaning of these presents, be it by fine or fines, feoffment or feoffments, deed or deeds inrolled or not inrolled, the inrolment of these presents, or otherwise howsoever, as by the said *George Oxenden* and *Richard Oxenden*, their heirs and assigns, or any of them, or by their or any of their counsel learned in the law, shall be reasonably advised, devised or required, so as such farther acts, things, devices, assurances and conveyances contain no farther covenant or warranty than in these presents is contained; and so as the person or persons who shall be required to do, make, levy, execute, acknowledge and suffer the same, be not compelled to travel farther than the cities of *London* and *Westminster* for the doing thereof: And it is declared, concluded and agreed by and between all the said parties to these presents, and the said *Henry Stronghill* for himself, his heirs, executors and administrators, doth covenant, promise, declare and agree to and with the said *Henry Oxenden*, his heirs, executors, administrators and assigns, that all and every fine and fines, recovery and recoveries, levied or suffered by him the said *Henry Stronghill*, or *Frances* the now wife of the said *Henry Stronghill*, feoffment and feoffments, conveyance and assurance in the law whatsoever, heretofore had and executed, or hereafter to be had, levied and executed by and between the said parties to these presents, or any of them, or by and between them, or any other person or persons of the premises, or any part or parcel thereof, shall be and enure, and shall be adjudged, deemed and taken to be and enure, to the only use and behoof of the said *George Oxenden* and *Richard Oxenden*, their heirs and assigns for ever, as by the indenture aforesaid to the

The use thereof.

the jurors aforesaid in evidence shewn more fully appears: By virtue whereof they the said *George Oxenden* and *Richard Oxenden* into the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned (among others) entered, and were thereof seised as the law requires; and being so thereof seised afterwards, to wit, in *Michaelmas* term in the year last aforesaid, a certain fine was levied in the court of the said late lord *Charles* the second, before *Thomas Jones*, *Hugh Wyndham*, *Job Charlton* and *Creswell Levinz*, justices of the said late lord the king of the bench, between the said *Henry Oxenden*, plaintiff, and the said *Henry Stronghill* and the said *Frances* his wife, deforceants, of the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned (among others) by the name of one barn, 30 acres of wood, and 130 acres of fresh marsh, with the appurtenances in *Ludd*, and in the parishes of *New Church*, *Rumney Marsh*, *Wood Church*, *Riverton*, and *Kunerton*, otherwise *Kenorthington*; by which said fine the said *Henry Stronghill* and *Frances* acknowledged the tenements aforesaid with the appurtenances, whereof, &c. (among other) to be the right of him the said *Henry Oxenden*, as those which the same *Henry Oxenden* had by the gift of the said *Henry Stronghill* and *Frances*, and them they released and quitted claim from them the said *Henry Stronghill* and *Frances* and their heirs to the said *Henry Oxenden* and his heirs for ever: And moreover the same *Henry Stronghill* and *Frances* granted for themselves and the heirs of the said *Henry Stronghill*, that they would warrant to the said *Henry Oxenden* and his heirs the said tenements with the appurtenances whereof, &c. against the said *Henry Stronghill* and *Frances* and the heirs of the said *Henry Stronghill* for ever: And the jurors aforesaid on their oath aforesaid farther say, that the fine aforesaid so as aforesaid levied, was levied to the use of the said *George Oxenden* and *Richard Oxenden* their heirs and assigns, whereby they the said *George Oxenden* and *Richard Oxenden* were seised of the tenements aforesaid with the appurtenances (whereof the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned are parcel) as the law requires: And afterwards, to wit, on the 1st day of *May* 1695, the said *Henry Stronghill* died, and left issue of his body the said *Richard Stronghill* the lessor of the plaintiff, the first begotten son and heir of the said *Henry Stronghill*, the same *Richard* being then under the age of 21 years; and the said *George Oxenden* and *Richard Oxenden* being so thereof seised, they the said *George Oxenden* and *Richard Oxenden* afterwards, to wit, on the 1st day of *April* in the 9th year of the reign of the lord *William* the third, now king of *England*, &c. demised the tenements aforesaid with the appurtenances (whereof the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned are parcel) to the said *J. Jordan*, *J. Mittell* and *T. Hamond*; To have and to hold to the same *J. Jordan*, *J. Mittell*, and *T. Hamond*, from the feast of the annunciation of the blessed virgin *Mary* then last

G. and R. Oxenden enter and are seised, &c. to whom *Henry Stronghill* and his wife levy a fine.

[201]

Henry Stronghill died leaving *Richard* (the plaintiff's lessor) his son and heir under age. *G. and R. Oxenden* demised to the defendants at will;

On whom the said *Richard* entered, and demised to the plaintiff, who was possessed till ejected by the defendants.

But whether,
 &c.

past for one year, and so from year to year, as long as both parties should please: By virtue of which demise the same *J. Jordan*, *J. Mittell* and *T. Hamond* into the demised premises aforesaid with the appurtenances entered, and were thereof possessed; and being so thereof possessed the said *Richard Stronghill*, the lessor of the said *James Yorke*, afterwards, to wit, on the 7th day of *October* in the 9th year of the said now lord the king aforesaid in the declaration aforesaid mentioned entered into the tenements aforesaid with the appurtenances, (whereof the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned are parcel) and them the said *J. Jordan*, *J. Mittell* and *T. Hamond* from thence expelled and amoved, and was thereof seised as the law requires; and being so thereof seised he the same *Richard*, the said 7th day of *October* in the 9th year of the reign of the said now lord the king aforesaid, demised the tenements aforesaid with the appurtenances to the said *James Yorke*; To hold to the said *James Yorke* and his assigns from the 29th day of *September* then last past unto the full end and term of five years from thence next ensuing and fully to be compleat and ended: By virtue of which said demise the same *James Yorke* into the tenements aforesaid with the appurtenances entered, and was thereof possessed, until the said *J. Jordan*, *J. Mittell* and *T. Hamond* afterwards, to wit, on the said 7th day of *October* in the 9th year aforesaid in the declaration aforesaid mentioned, into the tenements aforesaid with the appurtenances, which the said *Richard Stronghill* to the same *James* in form aforesaid demised for the term aforesaid which is not yet past, in and upon the possession of the said *James* entered, and him the said *James* from his farm aforesaid, his term aforesaid therein not ended, ejected, expelled and amoved, and him the said *James* being so thereout ejected, expelled and amoved from his possession aforesaid thereof kept out, and yet do keep out, as the said *James* within against them thereof complains: But whether on the whole matter aforesaid by the jurors aforesaid in form aforesaid found, the said *J. Jordan*, *J. Mittell*, and *T. Hamond* are guilty of the trespass and ejectment within written in the tenements aforesaid with the appurtenances in the declaration aforesaid mentioned, the jurors aforesaid are intirely ignorant, and thereof pray the advice of the court here: And if on the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, it shall seem to the justices of the said lord the now king here, that the said *J. Jordan*, *J. Mittell* and *T. Hamond* are guilty in law of the trespass and ejectment aforesaid in the tenements aforesaid with the appurtenances in the declaration aforesaid abovementioned, then the jurors aforesaid say on their oath aforesaid, that the said *J. Jordan*, *J. Mittell* and *T. Hamond* are thereof guilty in manner and form as the said *James Yorke* within against the same *J. Jordan*, *J. Mittell* and *T. Hamond* thereof complains; and they assess the damages of the said *James Yorke* by the occasion aforesaid, beside his costs and charges by him about his suit in this behalf expended, to 12*d.* and

and for thole costs and charges to 20*d*. But if on the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, it shall seem to the justices of the said now lord the king here, that the said *J. Jordan*, *J. Mittell* and *T. Hamond*, are not guilty in law of the trespass and ejectment aforesaid in the tenements aforesaid with the appurtenances in the declaration aforesaid abovementioned, then the same jurors say on their oath aforesaid that the said *J. Jordan*, *J. Mittell* and *T. Hamond*, are not thereof guilty in manner and form as the said *J. Jordan*, *J. Mittell* and *T. Hamond* within for themselves by pleading have alledged: And because the said justices and court here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid in the state as now before *George Treby*, knt. and his companions, justices of the said lord the king of the bench at *Westminster*, from the day of *Easter* in 15 days to hear their judgment thereof: On which day here come as well the said *James Yorke* as the said *John Jordan*, *John Mittell* and *Thomas Hamond* by their attornies aforesaid: And because the justices here will advise themselves of and upon the premisses before they give judgment thereon, day is given to the parties aforesaid here until on the morrow of the Holy *Trinity* to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here come as well the said *James* as the said *J. Jordan*, *J. Mittell* and *Thomas* by their attornies aforesaid: And because the justices here will farther advise themselves of and upon the premisses before they give judgment thereon, day is farther given to the parties aforesaid here until the day of *St. Michael* in three weeks to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here come as well the said *James* as the said *J. Jordan*, *J. Mittell* and *Thomas* by their attornies aforesaid: And because the justices here will farther advise themselves of and upon the premisses before they give judgment thereon, day is farther given to the parties aforesaid here until in the octave of *St. Hillary* to hear their judgment thereon, because the same justices here thereof not yet, &c.

[202]
Continuances.

Andrews and Lilly.

THis indenture made the 23d day of *May* in the 24th year of the reign of our sovereign lord *Charles* the second, by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, in the year of the Lord 1680, between *John Andrews* of the *Strand*, victualler, of the one part, and *John Lilly*, gent. of the other, witnesseth, That he the said *John Andrews*, for divers good causes and considerations him hereunto moving, hath demised, granted and to farm letten, and doth by these presents demise, grant and to farm let unto the said *John Lilly* all that his messuage, commonly called or known by the name of the *Tallow Chandlers Head*, situate, lying and being in *Bloomsbury*

Lease in ejectment, where the premisses are not inhabited, in order to recover the possession.

Pract. Reg.
469.

Market-place in the parish of *St. Giles in the Fields* in the county of *Middlesex*, and late in the possession of one *Henry Dunscomb*; To have and to hold the premises aforesaid with the appurtenances from the date of these presents for and during and unto the full end and term of two years from thence next ensuing and fully to be compleat and ended; Provided always, and upon condition that if the said *John Andrews*, his executors or administrators, shall at any time after the 30th of this present *May* tender to the said *John Lilly* his executors or administrators, i.e. then this present indenture, and every thing herein contained, shall be void and of none effect (any thing herein contained to the contrary in any wise notwithstanding): In witness whereof the parties aforesaid have hereto interchangeably set their hands, &c.

Legawe and Plumer.

Rule in ejectment to make the tenant defendant, on which costs were taxed for not confessing the lease, &c.

IT is ordered by the consent of the parties, that *Henry Plumer* be made a defendant in the place of the now defendant *Legawe*, and shall appear without delay at the suit of the plaintiff, and shall receive a declaration in a plea of trespass and ejectment for the tenements in question, and shall without delay plead thereto Not guilty; and on the trial of the issue aforesaid shall confess the lease, entry and actual ejectment for the tenements in question, and shall insist on the title only, otherwise judgment to be entered for the plaintiff against the now defendant *Legawe* by default: And if on the trial of the issue aforesaid the same *Henry* shall not confess the lease, entry and ejectment, whereby the plaintiff shall not be able to prosecute his writ against the said *Henry*, then no costs or charges shall upon such *nonprofs* be adjudged, but that the said *Henry* shall pay to the said plaintiff the cost and charges thereon to be taxed: And it is farther ordered, that if on the trial of the issue a verdict shall be given for the defendant *Henry*, or if it shall happen that the plaintiff shall not farther prosecute his writ aforesaid against the said *Henry* for any other cause than for not confessing the lease, entry and actual ejectment aforesaid, that then the lessor of the plaintiff aforesaid shall pay to the said *Henry* the costs and charges by the court here to be taxed.

John Powell
for costs 12/.

H. for the plaintiff.
L. for the defendant.

[203]

Leake against Legawe.

Declaration in ejectment by original to be delivered to the tenant to compel him to appear.
Salk. 432.

Midd., to wit. *L*awrence *Legawe*, late of *London*, gent. was attached to answer *Thomas Leake*, gent. in a plea, why with force and arms he into three messuages, 30 acres of land, 20 acres of meadow, and 10 acres of pasture with the appurtenances in *Hadley*, which the honourable *Vere Booth*, spinster,

spinster, to the same *Thomas* demised for a term which is not yet passed, entred, and him from his farm aforesaid ejected, and committed other outrages on him, to the great damage of the said *Thomas*, and against the peace of the now lady the queen, &c. And whereon the said *Thomas Leake* by *John Lilly* his attorney complains, that whereas the said *Vere Booth* on the 20th day of *November* in the first year of the reign of the lady *Anne*, now queen of *England*, &c. demised to the same *Thomas* the tenements aforesaid with the appurtenances; To have and to hold the tenements aforesaid with the appurtenances to the same *Thomas* and his assigns from the 17th day of the same month of *November* then last past unto the end and term of five years from thence next ensuing and fully to be compleat and ended; by virtue of which said demise the same *Thomas* into the tenements aforesaid with the appurtenances entred, and was thereof possessed; and he the said *Thomas* being so thereof possessed, the said *Lawrence* afterwards, to wit, on the same 20th day of *November* in the first year above said, with force and arms, &c. into the tenements aforesaid with the appurtenances, which the said *Vere Booth* to the same *Thomas* in form aforesaid demised for the term aforesaid, which is not yet past, entred, and him the said *Thomas* from his farm aforesaid ejected, and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 40 *l*. And therefore he produces the suit, &c.

To Sir William Buck, bart.

I am informed that you are in possession, or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear the first day of the next *Hillary* term in his majesty's court of queen's bench at *Westminster* by some attorney of that court, and then and there by rule of the same court to cause yourself to be made defendant in my stead; otherwise I shall suffer a judgment to be entred against me, and you will be turned out of possession. Notice.

Your loving friend,

Lawrence Legawe.

Unless the tenant in possession shall appear and plead to issue within one week next after the end of this term, let judgment be entred for the plaintiff against the now defendant Legawe, On the motion of Mr. Brodrick. Rule on motion to the court for judgment, unless

By the court.

Between { *Thomas Woodfield*, plaintiff,
and
William Evans, defendant. } In ejectment.

In the queen's bench.

Affidavit of the
delivery of the
declaration to
the tenant in
possession.
Pract. Reg.
44, 46.

And to the
tenant's wife.

[204]

And to the ser-
vant of the te-
nant.

N. B. This is
no good, unless
it appear to have
been receiv'd by
the tenant.

Rule for the
master to com-
pute the rent
arrear, and tax
the costs by the
statute.

Y. T. clerk to *John Lilly*, gent. one of the attornies of this court, maketh oath, that he did upon *Saturday* the 17th day of this instant *January*, deliver a copy of the declaration hereunto annexed unto *Martha Forbister*, tenant in possession of part of the premises in the said declaration mentioned; and also on the same day did deliver one other copy of the said declaration unto *Margaret* the wife of *Daniel Cane*, one other tenant in possession of other part of the premises in the said declaration mentioned; and also on the same day did deliver one other copy of the said declaration unto the wife of *Mr. Amos*, one other tenant in possession of other part of the premises in the said declaration mentioned: And this deponent farther saith, that he did upon *Monday* the 19th day of the same month of *January* deliver one other copy of the said declaration unto *Mrs. Howsen*, one other tenant in possession of other part of the premises in the said declaration mentioned; and then did also deliver one other copy of the said declaration unto the maid servant of *Mr. Wheallers*, her master, one other tenant in possession of other part of the premises in the said declaration also mentioned, being at sea, and the mistress his wife being sick in bed, as the said servant told this deponent: And this deponent farther saith, that he told them all severally, that it was a declaration in ejectment, and unless they did appear by some attorney of the court of queen's bench this present *Hillary* term, there would be judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect.

It is order'd that the defendant shall bring here into court 80 *l.* And thereupon it shall be referred to *Mr. Clarke* to compute the money being in arrear to the lessor of the plaintiff issuing out of the premises in question, and to tax the costs of the same lessor in this cause expended; and if the said lessor shall accept the money by the same *Mr. Clarke* to be computed and taxed in full discharge of this suit, then the said 80 *l.* shall be paid to the same lessor, or his attorney, out of court; but if he shall not accept thereof, and it shall appear on the trial of the issue that the same lessor hath no title to the premises in question, but for the non-payment of the money so being in arrear, then verdict shall be given for the defendant. On the motion of *Mr. Page*.

By the court.

Holdmy-

Holdmystaffe against Legawe.

Kent, to wit. **L**awrence Legawe, late of London, gent. was attached to answer *Thomas Holdmystaffe*, gent. in a plea, why with force and arms he into 10 messuages, 10 gardens, 6 orchards, 150 acres of land, 40 acres of meadow, and 80 acres of pasture with the appurtenances in *East-Church*, *Queenborough* and *Warden* in the isle of *Scape* in the county aforesaid, which *Christopher* lord viscount *Hatton* and *Samuel Grimstone*, bart. to the same *Thomas* demised for a term which is not yet past, entred, and him from his farm aforesaid ejected, and also into 10 other messuages, 10 other gardens, 6 other orchards, &c. with the appurtenances in *East-Church*, *Queenborough* and *Warden* in the isle of *Scape* in the county aforesaid, which *James Edge* to the same *Thomas* demised for a term which is not yet past, entred, and him from his farm aforesaid ejected, and committed other outrages on him, to the great damage of the said *Thomas*, and against the peace of the now lord the king, &c. And whereon the said *Thomas* by *John Allen* his attorney complains, that whereas the said *Christopher* viscount *Hatton*, and *Samuel Grimstone*, bart. on the 4th day of *July* in the 12th year of the reign of the now lord the king, at *East-Church* aforesaid demised to the same *Thomas* the tenements aforesaid with the appurtenances first mentioned; To have and to hold the tenements aforesaid with the appurtenances to the same *Thomas* and his assigns from the third day of *July* then last past unto the end and term of seven years from thence next ensuing and fully to be compleat and ended: And also that whereas the said *James Edge* afterwards, to wit, on the said 4th day of *July* in the 12th year of the reign of the said now lord the king, at *East-Church* aforesaid demised to the same *Thomas* the tenements aforesaid with the appurtenances last mentioned; To have and to hold the tenements aforesaid with the appurtenances last mentioned to the same *Thomas* and his assigns from the said 3d day of *July* then last past to the full end and term of seven years from thence next ensuing and fully to be compleat and ended: By virtue of which said several demises the said *Thomas* into the several tenements aforesaid with the appurtenances entred, and was thereof possessed; and he the said *Thomas* being so thereof possessed, the said *Lawrence* afterwards, to wit, on the fifth day of the same month of *July* in the 12th year above said, with force and arms, &c. into the several tenements aforesaid with the appurtenances, which the said *Christopher* lord viscount *Hatton*, *S. Grimstone* and *James Edge*, to the same *Thomas* in form aforesaid demised for the term aforesaid, which is not yet past, entred, and him from his farm aforesaid ejected, and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 40 *l*. And therefore he produces the suit, &c.

Ejectment on a double demise. Salk. 774.

Demise by executors.

Demise by Cestui que trust.

Fisher

Fisher against Wigg and another.

Trin. 11 W. 3. Roll. 1560.

Ejectment on a
double demise
against tenants in
common for four
parts of lands,
&c. in five parts
to be divided.
Salk. 391.
Pract. Reg.
454, 560.
The demise of
three fifth parts.

The demise of
one fifth part.

Hereford, to wit. **W**illiam Fisher complains of James Wigg and John Nicholls, which said John is under the age of 21 years, to wit, of the age of 17 years, in the custody of the marshal, &c. for this, to wit, that whereas J. Higby, Richard Higby, Tho. Higby, Tho. Drew and Dorothy his wife, on the first day of January in the 9th year of the reign of the lord William the third, now king of England, &c. at the parish of B. in the county aforesaid, by their certain indenture then and there made between them the said J. Higby, R. H. &c. on the one part, and the said William Fisher of the other part, one part of which said indenture sealed with the seals of them the said J. H. R. H. &c. the same William Fisher here in court produces, bearing date the same day and year, did demise, grant, and to farm let, to the same W. Fisher three parts, in five parts to be divided, of one messuage, 50 acres of land, 50 acres of meadow, and 50 acres of pasture with the appurtenances in the parish of B. aforesaid in the county aforesaid; To have and to hold the same three parts of the tenements aforesaid, in five parts to be divided, to the same W. Fisher and his assigns from the feast of the Birth of our Lord then last past unto the full end and term of seven years from thence next ensuing and fully to be compleat and ended; Yielding and paying therefore to the same J. H. R. H. &c. during the term aforesaid the yearly rent of 10s. as by the same indenture, among other things, is more fully manifest and appears: And that by a certain other indenture made at the parish aforesaid in the county aforesaid, on the said first day of January in the 9th year above said, between J. F. and E. his wife, A. S. and C. S. of the one part, and the said W. Fisher of the other part, which other part of the said other indenture sealed with the seal of them the said J. F. and E. his wife, A. S. and C. S. the same W. Fisher here in court produces, bearing date the same day and year, the same J. F. and E. his wife, A. S. and C. S. did demise, grant and to farm let, to the same W. Fisher one other fifth part, in five parts to be divided, of the tenements aforesaid with the appurtenances; To have and to hold the same fifth part of the said tenements with the appurtenances to the same W. Fisher and his assigns from the said feast of the Birth of our Lord then last past unto the full end and term of seven years from thence next ensuing and fully to be compleat and ended; Yielding and paying therefore to the said J. F. and E. his wife, A. and C. during the term aforesaid, the yearly rent of 5s. as by the same indenture is also more fully manifest and appears: By virtue of which said several demises the same W. Fisher into the tenements aforesaid with the appurtenances entred, and was thereof possessed until the said James Wigg and John Nicholls

Nicholls afterwards, to wit, on the said first day of *January* in the 9th year abovesaid, with force and arms, &c. into the tenements abovesaid with the appurtenances in and upon the possession of him the said *W. Fisher* thereof entred, and him the said *W. Fisher* from his several farms abovesaid, his terms abovesaid therein not ended, ejected, expelled and amoved, and him the said *W. Fisher* so thereout ejected, expelled and amoved from his possession abovesaid thereof kept out, and yet do keep out, and other outrages on him then and there committed, against the peace of the said now lord the king, and to the damages of the said *W. Fisher* 10 l. And therefore he produces the suit, &c.

And the said *James Wigg* by *R. G.* his attorney, and the said *J. Nicholls* by the said *R. G.* his guardian, by the court of the said now lord the king specially admitted, come and defend the force and injury when, &c. And as to the force and arms, or whatever that is against the peace of the said now lord the king, say that they are not thereof guilty: And of this they put themselves on the country: And the said *W. Fisher* thereof likewise, &c. And as to the residue of the trespass and ejectment abovesaid above supposed to be committed, the same *James* and *John* say, that the said *W. Fisher* ought not to have or maintain his action abovesaid thereof against them, because they say, that the tenements abovesaid with the appurtenances in which, &c. are, and at the time when, &c. as also from time out of mind were parcel of the manor of *B.* in the county of *Hertford* abovesaid, and copyhold tenements of the same manor, and also demised and demisable by copy of court-roll of the said manor, by the lord of the said manor for the time being, to any person or persons whomsoever willing to take the same in fee-simple, or otherwise, at the will of the lord according to the custom of the manor abovesaid; of which said manor with the appurtenances whereof, &c. the right honourable dame *Elizabeth Capel*, widow, and *R. B.* gent. before the time when, &c. were seised in their demesne as of fee; and being thereof so seised afterwards, and before the said time when, &c. to wit, at a court of them the said dame *Elizabeth Capel*, and *R. B.* of their manor abovesaid, held at the manor abovesaid on the 15th day of *October* 1660, the same dame *Elizabeth Capel* and *R. B.* by copy of court-roll of the same manor did grant the tenements with the appurtenances in which, &c. to one *A. H.* the elder, his heirs and assigns forever, at the wills of the lords of the manor abovesaid according to the custom of the said manor: By virtue of which said grant the said *A. H.* the elder into the same tenements entred, and was seised in his demesne as of fee, at the will of the lords of the manor abovesaid according to the custom of the same manor, of and in the tenements abovesaid with the appurtenances in which, &c. and had issue *W. H.* his eldest son, and three other sons, to wit, *A. R.* and *J.* and two daughters, to wit, *G.* and *A.* and that he the same *A. H.* the father being so thereof seised afterwards, and before the time when, &c. at that same court then and

As to the force,
&c. Not guilty.

As to the residue
that the premises
are copyhold
held of the ma-
nor of *B.* whereof
dame *Capel* and
B. are seised in
fee.

[206]

Grant by copy
to *A. H.* in fee,
who had issue
four sons and
two daughters.

And surrendered
to his wife for
life, and after to
his three younger

sons and two daughters in fee, equally to be divided.

Who were admitted.

And all of them except *A.* died.

Who being sole seised by survivorship took to husband *J. N.* and had issue one of the defendants.

Who on the death of his father and mother entred and was seised, on whom the plaintiff entred, and he and the other defendant as his servant, re-entred as, &c.

and there held surrendered the same tenements into the hands of the lord and lady of the manor aforesaid, to the use and behoof of *G.* his then wife, for and during the term of her natural life, and after her decease to the use of the said *A. H.* the younger, *R. H.* and *J. H.* his three sons, and *G. H.* and *A. H.* his two daughters, equally to be divided, and to their respective heirs and assigns for ever; and that afterwards, to wit, the same day, year and place, at the same court the said lord and lady of the manor aforesaid, by copy of court-roll of the same manor, granted the tenements aforesaid to the said *G.* the wife of the said *A. H.* the elder, for and during the term of her natural life, the remainder thereof after her decease to the said *A. H.* the younger, *R. H.* *J. H.* *G. H.* and *A. H.* the sons and daughters of the said *A. H.* the elder and *G.* his wife, equally to be divided, and to their respective heirs and assigns for ever, at the will of the lords of the manor aforesaid according to the custom of the same manor, according to the form and effect of the surrender aforesaid; and the said *G.* the wife of the said *A. H.* the elder, and the said *A. H.* the younger, *R. H.* *J. H.* *G. H.* and *A. H.* were then and there admitted tenants thereof in form aforesaid: By virtue of which said grant the said *G.* the wife of the said *A. H.* the elder, was seised of the tenements aforesaid in which, &c. in her demesne for term of life, the remainder thereof to the same *A. H.* the younger, *R. H.* *J. H.* *G. H.* and *A. H.* equally to be divided, and to their respective heirs belonging, at the will of the lord of the manor aforesaid according to the custom of the said manor: And the said *G.* the wife of the said *A. H.* the elder, so being thereof seised afterwards, and before the time when, &c. to wit, on the first day of *May* 1661, at *B.* aforesaid in the county aforesaid, she the said *G.* the wife of the said *A. H.* the elder, and the said *A. H.* the elder, *A. H.* the younger, *R. H.* *J. H.* and *G. H.* all died, and the said *A.* did them survive, and keep herself in the tenements aforesaid in which, &c. and was thereof sole seised by right of survivorship in her demesne as of fee, at the will of the lord of the manor aforesaid according to the custom of the said manor; and being so thereof seised the said *A. Higby* afterwards, and before the said time when, &c. to wit, on the first day of *May* 1680, at *B.* aforesaid took to husband one *J. N.* which said *J.* and *A.* had issue between them *J. Nicholls* their first begotten son, now one of the defendants; and afterwards, to wit, on the first day of *May* 1690, at *B.* aforesaid the said *J. N.* the elder died, and the said *A. N.* then there likewise of such her estate died thereof seised, after whose death the tenements aforesaid with the appurtenances descended to the same *J. N.* now one of the defendants, as son and heir of the said *A.* whereby the said *J. N.* into the tenements aforesaid with the appurtenances entred, and was thereof seised in his demesne as of fee, at the will of the lord of the manor according to the custom of the said manor; and being so thereof seised the said *J. H.* and *R. H.* the lessors, *T. H.*

T. C.

T. D. and his wife, and also the said *J. F.* and *E.* his wife, *A. S.* and *G. S.* on the same first day of *January* in the 9th year above said, at *B.* afore said respectively made the said indentures of the said three fifth parts, and the said one fifth part of the tenements afore said with the appurtenances in which, &c. to the said *W. Fisher*, as by the declaration afore said is supposed; by colour of which said indentures the said *W. F.* into the said four parts of the tenements afore said with the appurtenances in which, &c. before the said time when, &c. entred, and was thereof possessed; on the possession of which said *W. Fisher* thereof the same *James* and *John Nicholls* afterwards, to wit, the said time when, &c. into the said four parts of the tenements afore said with the appurtenances, to wit, the said *J. Nicholls* claiming his estate afore said, and the said *James*, as his servant and by his command thereto entred, and the said *W. Fisher* from his farms afore said thereof ejected, as they lawfully might: And this they are ready to verify: Wherefore they pray judgment if the said *W. F.* ought to have or maintain his action afore said thereof against them, &c.

And the said *W. Fisher*, as to the said three fifth parts of the tenements afore said with the appurtenances in the first demise afore said above mentioned, says, that he by any thing by the said *James* and *John* above in pleading alledged ought not to be precluded from his action afore said thereof against them had, because he says, that right and true it is that the tenements afore said with the appurtenances are, and for all the time above said were parcel of the manor afore said, and demised and demisable, as by the plea afore said is above supposed: But the said *W. Fisher* farther says, that the said *A. H.* and the said *G.* had issue between them lawfully begotten one *W. H.* their eldest son and heir, and also the said *A. H.* the younger, *R. H.* and *J. H.* his three sons, and also *G. H.* and *A. H.* his daughters, and surrendered the tenements afore said with the appurtenances into the hands of the lord and lady of the manor afore said, to the use and behoof of the said *G.* his wife for the term of her natural life, and after her decease, to the use of the said *A. H.* the younger, *R. H.* *J. H.* *G. H.* and *A. H.* his sons and daughters, equally to be divided, and to their respective heirs and assigns for ever: And afterwards the said *A. H.* the father there died; and thereupon the same dame *Capel* and *R. B.* granted the said tenements with the appurtenances to the said *G.* the wife of the said *A. H.* the elder, for and during the term of her natural life; and after her decease, to the said *A. H. R. H. J. H. G. H.* and *A. H.* sons and daughters of the said *A. H.* the elder and *G.* his wife, equally to be divided, and to their respective heirs and assigns for ever; to hold at the will of the lords of the manor afore said according to the custom of the said manor, as in the plea afore said is alledged: And that the said *G.* the wife, by virtue of the surrender and grant afore said, was seised of the tenements afore said with the appurtenances

Repl. as to three fifth parts. Admits they are copyhold.

[207]
And surrendor and uses.

Tenants in common, three died and their parts descended to *W. H.* as elder brother and heir.

Custom to surrender out of court.

appurtenances in her demean for the term of her life, the remainder thereof to the same sons and daughters at the will of the said lords according to the custom of the manor aforesaid in form aforesaid belonging: And that the said *G.* the wife of the said *A. H.* the elder, and the said *A. H.* the younger, *R. H.* *J. H.* and *G. H.* the daughter, died, and the said *A.* them survived, and afterwards took to her husband the said *John Nicholls*, and they had issue between them the said *J. N.* now one of the defendants; and afterwards the said *J. N.* the elder and *A.* died, as by the plea aforesaid is above supposed: But the same *W. Fisher* says, that the said *G.* the wife of the said *A. H.* the elder, died in the life-time of the said *A. H.* the younger, *R. H.* *J. H.* and *G. H.* the sons and daughter of the said *A. H.* the elder and *G.* his wife, whereby the same *A. R.* and *J.* the sons, and the said *G.* and *A.* the daughters, into the tenements aforesaid with the appurtenances entered, and were thereof seised in common in their demean as of fee at the will of the lord according to the custom of the manor aforesaid; and being so thereof seised the said *A.* the son of such his estate of and in the tenements aforesaid at *B.* aforesaid died thereof seised without heir issuing from his body; after whose death his purparty, to wit, the fifth part of the tenements aforesaid with the appurtenances descended to the said *W. H.* as elder brother and heir of the said *A.* the son; and the said *R.* the son of such his estate of and in the tenements aforesaid with the appurtenances there likewise died seised without heir from his body issuing; after whose death his purparty, to wit, another fifth part of the tenements aforesaid with the appurtenances, descended to the said *W. H.* as elder brother and heir of the same *R.* the son; and the said *J.* the son of such his estate of and in the tenements aforesaid with the appurtenances there likewise died seised without heir from his body issuing; after whose death his purparty, to wit, another fifth part of the tenements aforesaid with the appurtenances, descended to the said *W. H.* as elder brother and heir of the said *J.* and by reason of the premises the same *W. H.* was seised of three parts of the tenements aforesaid with the appurtenances, in five parts to be divided, in his demean as of fee at the will of the lord according to the custom of the manor aforesaid: And the same *W. F.* farther says, that within the manor aforesaid there is and from time immemorial hath been a certain antient and laudable custom used and approved, to wit, that every customary tenant of the said manor, being seised of any customary lands or tenements of the same manor in his demean as of fee at the will of the lord according to the custom of the same manor and within the manor aforesaid, did surrender, and was used and accustomed to surrender at his pleasure, all such his customary lands and tenements, or any part thereof, out of the court of the manor aforesaid, into the hand of the lord or lords of the manor aforesaid for the time being, by the hands of two cus-

tomary

customary tenants, to any use or uses whatsoever as to him should seem fit; and if any such surrender out of the court of the manor aforesaid into the hands of the lord or lords of the manor aforesaid for the time being, by the hands of two customary tenants, was in form aforesaid had and made, that then such surrender during all the time aforesaid was presented, and was used to be presented, at the court of the same manor next following such surrender at the said manor to be held: And that the said *W. H.* last named of the said three parts of the tenements aforesaid with the appurtenances, in five parts to be divided, in form aforesaid being seised, the same *W. H.* afterwards, and before the said time when, &c. to wit, on the first day of *August* in the 9th year of the reign of the said now lord the king aforesaid, at the parish of *B.* aforesaid in the county aforesaid and within the manor aforesaid, surrendered the same three fifth parts of the tenements aforesaid with the appurtenances into the hands of the lord of the manor aforesaid, by the hands of *N. C.* and *J. J.* then two customary tenants of the manor aforesaid, according to the custom of the said manor, to such uses, intents and purposes, as he the same *W. H.* by his last will and testament should limit and appoint; and afterwards, to wit, the same day and year made his last will and testament in writing, and by his said last will gave and devised his same three fifth parts of the tenements aforesaid with the appurtenances to the said *J. H. R. H. T. H.* and *D.* in the declaration aforesaid above named, being the sons and daughter of the said *W. Higby* the father, and their heirs for ever; and afterwards, to wit, on the tenth day of *December* in the ninth year aforesaid, the said *W. Higby* the father at the parish aforesaid in the county aforesaid died seised of such his estate of and in the said three parts of the tenements aforesaid with the appurtenances; and afterwards, to wit, at the next court of the manor aforesaid held after the said surrender, to wit, at the court of the said manor held within the manor aforesaid on the 18th day of *December* in the 9th year aforesaid, and the said surrender according to the custom of the manor aforesaid, and the said death of him the said *W. H.* the father, by the homage of the said court was presented; and thereupon *R. P.* and *N. P.* then lords of the manor aforesaid, by their then steward of the court of that manor, by copy of court-roll of the said manor in execution of the will aforesaid granted the same three fifth parts of the tenements aforesaid with the appurtenances to the said *J. H. R. H. T. H.* and *D.* the sons and daughter of the said *W. H.* the father; To have and to hold to them and their heirs at the will of the lord according to the custom of the manor aforesaid; and afterwards, to wit, the same day, year and place last aforesaid, *T. D.* took to wife the said *D. H.* and by reason of the premisses the same *J. H. R. H.* and *T. H.* the sons in their own proper right, and the said *T. D.* and *D.* in the right of the said *D.* into the said three fifth parts

W. H. surrendered to the use of his will, and thereby devised these three parts to the plaintiff's lesor.

[208]

The presentment of the surrender and of the death of *W. H.*

The admission of the devisees to the three fifths;

who demised
them to the
plaintiff.

The like plea
to the other fifth
part.

parts of the tenements aforesaid with the appurtenances entered, and were, to wit, the same *J. H. R. H.* and *T. H.* the sons, in their own proper right, and the said *T. D.* and *D.* in the right of the said *D.* thereof seised in their demean as of fee at the will of the lord of the manor aforesaid according to the custom of the said manor; and being so thereof seised the same *J. H. R. H.* and *T. H.* the sons, and the said *T. D.* and *D.* on the said first day of *January* in the 9th year aforesaid at *B.* aforesaid, into the tenements aforesaid with the appurtenances entered, and by the indenture aforesaid in the declaration aforesaid above first mentioned demised the same three fifth parts of the tenements aforesaid with the appurtenances to the same *W. F.* To have and to hold to the same *W. F.* and his assigns from the said feast of the Birth of our Lord then last past unto the full end and term aforesaid of seven years from thence next ensuing and fully to be compleat and ended: By virtue of which said demise the same *W. F.* into the same three fifth parts of the tenements aforesaid with the appurtenances entered, and was thereof possessed, until the said *James* and *J. Nicholls* afterwards, to wit, the same 1st day of *January* in the 9th year aforesaid, into the same three fifth parts of the tenements aforesaid with the appurtenances in and upon the possession of him the said *W. F.* entered, and him the said *W. F.* from his farm aforesaid, his term aforesaid therein not ended, ejected, expelled and amoved, in manner and form as the same *W. F.* above thereof against the said *James* and *J. N.* complains: And this he is ready to verify: Wherefore he prays judgment, and his damages by reason of the said trespass and ejectment, to be adjudged to him, &c. And as to the said fifth part of the tenements aforesaid with the appurtenances in the declaration aforesaid abovementioned to be demised to the same *W. F.* by the said *J. T.* and *E.* his wife, and *A. S.* and *G. S.* spinsters, the same *W. F.* says, that he by any thing by the said *James* and *John* above in pleading alledged ought not to be precluded from his action aforesaid thereof against them had, because as before he says, that right and true it is, that the tenements aforesaid with the appurtenances are and for all the time aforesaid were parcel of the manor aforesaid, and demised and demisable, as by the plea aforesaid is above alledged; but the said *W. F.* farther says, that the said *A. H.* the elder and the said *G.* had issue between them lawfully begotten one *W. H.* their eldest son and heir, and also the said *A.* the younger, *R.* and *J. H.* three sons, and also the said *G. H.* and *A. H.* his daughters, and surrendered the tenements aforesaid with the appurtenances into the hands of the said lord and lady of the manor aforesaid, to the use and behoof of the said *G.* his wife for the term of her natural life, and after her decease to the use and behoof of the said *A. H.* the younger, *R. H.* *J. H.* *G. H.* and *A. H.* his sons and daughters equally to be divided, and to their respective heirs and assigns for ever; and afterwards the said

said *A.* the father died; and thereupon the said dame *C.* and *R.* lords of the manor aforesaid, granted the tenements aforesaid with the appurtenances to the said *G.* the wife of the said *A. H.* the elder, for and during the term of her natural life; and after her decease, to the said *A. H. R. H. J. H. G. H.* and *A. H.* the sons and daughters of the said *A. H.* the elder and *G.* his wife, equally to be divided, and to their respective heirs and assigns for ever; and that the said *G.* the wife by virtue of the surrender and grant aforesaid was seised of the tenements aforesaid with the appurtenances in her demean for the term of her life, the remainder thereof to the same sons and daughters at the will of the lords of the manor aforesaid according to the custom of the said manor belonging; and that the said *G.* the wife of the said *A. H.* the elder, *A. H.* the younger, *R. H. J. H.* and *G. H.* the daughter, died, and the said *A.* survived them; and afterwards took to her husband the said *J. N.* and they had issue between them the said *John Nicholls* now one of the defendants, and afterwards the said *A.* died, as by the plea aforesaid above is supposed: But the same *W. F.* as before, farther says, that *G.* the wife of the said *A. H.* the elder died in the life-time of the said *A. H.* the younger, *R. H. J. H. G. H.* and *A. H.* the sons and daughters of the said *A. H.* the elder and *G.* his wife; whereby the same *A. R.* and *J.* the sons, and the said *G.* and *A.* the daughters, into the tenements aforesaid with the appurtenances entered, and were thereof seised in common, to wit, the same *G.* the daughter of a fifth part of the tenements aforesaid with the appurtenances in her demean as of fee at the will of the lord according to the custom of the manor aforesaid; and being so thereof seised the same *G.* the daughter, afterwards, and before the said time when, &c. at the parish aforesaid took to her husband one *J. S.* and the same *J. S.* and *G.* his wife afterwards, and before the said time when, &c. there had issue between them lawfully begotten the said *E.* now the wife of the said *J. F.* the said *A.* and *G. S.* and afterwards, and before the said time when, &c. the said *J. S.* and afterwards the said *G.* his wife died of such their estate of and in the same fifth part of the tenements aforesaid with the appurtenances seised, after the death of which said *G. S.* the same fifth part of the tenements aforesaid with the appurtenances descended to the said *E.* now the wife of the said *J. F.* and to the said *A.* and *G. S.* as daughters and coheirs of the said *G. S.* late the wife of the said *J. S.* whereby the same *J. F.* and *E.* his wife, *A.* and *G. S.* into the same fifth part of the tenements aforesaid with the appurtenances entred, and were, to wit, the same *J. F.* and *E.* his wife, seised in the right of the same *E.* and the said *A.* and *G. S.* seised in their own proper rights in their demesne as of fee, at the will of the lord according to the custom of the manor aforesaid; and being so thereof seised the same *J. F.* and *E.* his wife, *A.* and *G. S.* on the said first day of *January* in the 9th year abovesaid, at *B.*

[209]

aforesaid, by the indenture aforesaid in the declaration aforesaid above second mentioned, demised the same fifth part of the tenements aforesaid with the appurtenances to the same *William Fisher*; To have and to hold to the said *William Fisher* and his assigns from the said feast of the Birth of our Lord then last past unto the full end and term aforesaid of seven years from thence next ensuing and fully to be compleat and ended: By virtue of which said demise the same *William Fisher* into the same fifth part of the tenements aforesaid with the appurtenances entred, and was thereof possessed until the said *James* and *John Nicholls* afterwards, to wit, on the same first day of *January* in the 9th year above said, into the same fifth part of the tenements aforesaid with the appurtenances in and upon the possession of him the said *William Fisher* entred, and him the said *W. F.* from his farm aforesaid thereof, his term aforesaid therein not yet expired, ejected, expelled and amoved, in manner and form as the same *William Fisher* above thereof against the said *James* and *John Nicholls* complains: And this he is ready to verify: Wherefore he prays judgment, and his damages by reason of the said trespass and ejectment, to be adjudged to him, &c.

Judgment was given for the plaintiff on demurrer.

[210]

Elegit.

Mountford against The lord Griffin.

Elegit in debt in
C. B.
Pract. Reg.
507, 510.

13 E. 1. c. 18.

Another return-
able: *tres Mich.*

Another return-
able: *Octob. Hill.*

AND the said *Edward* in mercy, &c. Afterwards, to wit, on the 17th day of *May* in this same term the said *Samuel* comes here into court by his attorney aforesaid, and by the statute, &c. elects to be delivered to him all the goods and chattels of the said *Edward*, except his oxen and the beasts of his plough, and likewise one half of all his lands and tenements in the county of *North'ton*, to hold to himself the goods and chattels aforesaid as his own proper goods and chattels, and also to hold the one half aforesaid as his freehold to him and his assigns, according to the form of the statute aforesaid until the debt and damages aforesaid shall be thereout levied: and it is granted to him returnable here in the morrow of the Holy *Trinity*: On which day here comes the said *Samuel* by his attorney aforesaid, and the sheriff hath done nothing therein, nor returned the writ thereof: Therefore as before let another writ thereof be made to him in form aforesaid, returnable here from the day of *St. Michael* in three weeks: On which day here comes the said *Samuel* by his attorney aforesaid, and the sheriff hath done nothing therein, nor returned the writ thereof: Therefore as before let another writ thereof be made to him

him in form aforesaid, returnable here in the octave of *St. Hillary*: Before which day the lord king *James* the second by his letters patent duly made and sealed under his great seal of *England*, bearing date at *Westminster* the 30th day of *November* in the fourth year of his reign, ordained and created the said *Edward* a baron of this kingdom of *England*, by the name of *Edward* baron *Griffin* of *Baybrooke* in the county of *North'ton*; before which said octave of *St. Hillary* the said lord king *James* the second abdicated himself from the government of his kingdom of *England*, on which day the same writ remained without day, because the court of bench here was not then held nor open: But afterwards by virtue of a certain act of parliament made at *Westminster* in the county of *Middlesex* on the 13th day of *February* in the first year of the reign of the lord and lady *William* and *Mary* king and queen of *England*, &c. it was revived, continued and adjourned unto fifteen days of *Easter* next following: On which day here comes the said *Samuel* by his attorney aforesaid, and the sheriff hath done nothing therein, nor returned the writ thereof: Therefore as before let another writ thereof be made to him in form aforesaid, returnable here in the morrow of the *Holy Trinity*: On which day here comes the said *Samuel* by his attorney aforesaid, and the sheriff hath done nothing therein, nor returned the writ thereof: Therefore as before let another writ thereof be made to him in form aforesaid, returnable here from the day of *St. Martin* in fifteen days: On which day here comes the said *Samuel* by his attorney aforesaid, and the sheriff, to wit, *Richard Lockwood*, esq; now returns here a certain inquisition taken before him at the town of *North'ton* in the county of *North'ton* aforesaid on the 21st day of *November* last past by the oath of twelve, &c. whereby it is found that the said *Edward* from the day of *Easter* in fifteen days in the first year of the reign of the said lord *James* the second late king of *England*, &c. was seised in his demesne as of fee, of and in one messuage, and of and in one close of pasture with the appurtenances called t' e *Park*, to the said messuage adjoining, containing by estimation 25 acres situate, lying and being in *Dingley* in the county aforesaid, now or late in the tenure or occupation of *James Griffin*, esq; or his assigns, of the clear yearly value, in all issues beyond reprises, of 10*l.* and of and in one other close of pasture with the appurtenances called the *Nether-Grounds*, containing by estimation 250 acres, lying and being in *Dingley* aforesaid in the county aforesaid, now or late in the tenure or occupation of *Thomas Durrant* or his assigns, of the clear yearly value, in all issues beyond reprises, of 100*l.* and of and in, &c. And it is farther found by the said inquisition, that the said messuage called the *Castle* in *Brabrooke* aforesaid, and the said five several closes called the *Parks*, the *Grange*, the *New Close*, the *Butt Close* and the *Bush Close*, with the appurtenances in the tenure or occupation of the said *John Stone* or his assigns, the said closes of pasture called the *Cottiers Close* and *Armitage Close* with the appurtenances in the tenure or

Defendant created a baron.

King J. abdicated.

Court not open.

Proceedings revived and continued to 15 Pasch. by 1 W. & M. c. 4. Pract. Reg. 36.

Another returnable Cro. Trin.

Another returnable 15 Martini.

Inquisition returned.

Defendant seised in fee.

[211]

The moiety set forth;

Delivered to the
plaintiff, to hold,
&c.

Hath no other,
&c.

occupation of the said *John Stone* or his assigns, the said close of pasture called the *Farthest Close* with the appurtenances in the tenure or occupation of the said *Richard Maunton* or his assigns, the said messuage, forty acres of arable land, fifteen acres of meadow and thirty acres of pasture in the tenure or occupation of the said *John Underwood* or his assigns, which said several messuages, closes of land and tenements aforesaid last mentioned, situate, lying and being in *Brabrooke* aforesaid in the county aforesaid, are an equal full and just moiety of the premises aforesaid by the inquisition aforesaid in form aforesaid found; which said moiety last mentioned the same Sheriff on the day of the taking of the said inquisition caused to be delivered to the said *Samuel Mountfort* at the price and extent aforesaid, to hold the said moiety as his freehold to him and his assigns, until he shall thereout fully levy the debt and damages aforesaid; and it is by the same inquisition farther found, that the said *Edward* lord *Griffin* hath no goods or chattels, nor on the day of the rendition of the judgment aforesaid, or ever after, unto the day of the caption of the same inquisition, had any other or more lands or tenements in the county of *North'ton* aforesaid to the notice of the jurors of the inquisition aforesaid.

Butter, widow, against Britland, esq;

The return of
an *Elegit* in debt
after a *Scire fac.*

The defendant
seised in fee of
messuages, &c.

AN inquisition indented, taken at *Knutsford* in the county of *Chester* 11th day of *October* in the 7th year of the reign of our lord *George* now king of *Great Britain*, &c. before me *T. Brooke*, bart. Sheriff of the county of *Chester* aforesaid, by virtue of the writ of the said lord the king to me directed, and to this inquisition annexed, by the oath of *John Shellorne*, *Benjamin Harrison*, &c. good and lawful men of my bailiwick, who being sworn and charged say on their oath, that *George Britland*, esq; in the writ aforesaid to this inquisition annexed named, at the time of the rendition of the judgment aforesaid, to wit, on *Thursday* next after the octave of *St. Hillary* in *Hilary* term in the 4th year of the reign of the said lord the now king, on which day the judgment thereof was given against him, and also on the day of the caption of this inquisition, was seised in his demean as of fee of and in one capital messuage or farm, and of divers pieces and parcels of arable land, meadow and pasture to the same messuage belonging and with the same enjoyed, containing by estimation 50 acres of the clear yearly value, in all issues beyond reprises, 42*l.* situate, lying and being in *Hollingworth* in the county aforesaid, and now in the tenure or occupation of the said *George Britland* or his assigns; and also of and in two closes or parcels of land arable, meadow and pasture, containing by estimation 10 acres of the clear yearly value, in all issues beyond reprises, 40*s.* lying and being in *Hollingworth* aforesaid in the county aforesaid, and now in the

tenure or occupation of *John Beely* or his assigns; and also of and in one water corn-mill of the clear yearly value, in all issues beyond reprises, 20*s.* situate, lying and being in *Hollingworth* aforesaid in the county aforesaid, and now in the tenure or occupation of the said *G. B.* or his assigns; and also of and in all that annual rent or fee-farm 11*s.* 10*d.* of lawful money of *Great Britain* issuing or reserved from or out of a messuage or farm in *Romily* in the county aforesaid, the inheritance of *John Answorth*: And the jurors aforesaid on their oath aforesaid farther say, that the said capital messuage or farm, with the said several pieces of land arable, meadow and pasture to the same messuage belonging and with the same enjoyed, containing by estimation 50 acres of the clear yearly value, in all issues beyond reprises, 42*l.* in the tenure or occupation of the said *George Britland* or his assigns, and the said water corn-mill with the appurtenances of the clear yearly value, in all issues beyond reprises, 20*s.* in the tenure or occupation of the said *George Britland*, are a true and equal moiety of all and singular the lands, tenements and hereditaments whatsoever in the county of *Chester* of the said *George Britland* in the said writ named; which said moiety I the said sheriff have on the day of the caption of this inquisition caused to be delivered to the said *Grace Butler*, widow, in the said writ named, to hold to her and her assigns as her freehold, according to the form of the statute thereof made and provided, until the residue of the debt and damages in the writ aforesaid specified shall be thereout fully levied, as the writ aforesaid commands and requires: And the jurors aforesaid on their oath aforesaid farther say, that the said *George Britland* in the said writ named, at the time of the rendition of the judgment aforesaid in the said writ specified, had not, nor on the day of the caption of this inquisition has, any other or more lands or tenements, or any goods or chattels in the county aforesaid, to the knowledge of the jurors aforesaid: In witness whereof as well I the said sheriff as the jurors aforesaid to this inquisition have set our seals, the day, year and place above said.

Take great care to make both moieties equal.

[212]

The moiety set out to the plaintiff to hold, &c.

This must be in the exchequer. If the sheriff deliver more than the moiety, it is void. Salk. 563.

Gage, esq; against Acton, widow, administratrix, &c.

Error in the exchequer chamber on a judgment in debt in the king's bench. Salk. 325. Pract. Reg. 518, 536, 593, 594.

THE lady of the queen sent to our trusty and well beloved *John Holt*, knt. our chief justice assigned to hold pleas before us, her writ close in these words, to wit, *Anne* by the grace of God of *Great Britain, France and Ireland* queen, defender of the faith, &c. to our trusty and well beloved *John Holt*, knt. our chief justice assigned to hold pleas before us, greeting: Whereas in a statute made in the parliament of the lady *Elizabeth*, late queen of *England*, held at *Westminster* the 23d day of *November* in the 27th year of her reign, it was among other things enacted by the authority of the same parliament, that where any judgment should at any time then after be given in the court of the king's bench in any suit or action of debt, detinue, covenant, account, action upon the case, *ejectione firmæ* or trespass, first commenced or first to be commenced there (other than such only where we should be party), the party plaintiff or defendant, against whom any such judgment should be given, might at his election sue forth out of the court of chancery a special writ of error to be devised in the said court of chancery, directed to the chief justice of the said court of the king's bench, commanding him to cause the said record and all things concerning the said judgment to be brought before the justices of the common bench and the barons of the exchequer into the exchequer chamber, there to be examined by the said justices of the common bench and barons aforesaid: Which said justices of the common bench and such barons of the exchequer as are of the degree of the coif, or six of them at the least, by virtue of the same act thereupon have full power and authority to examine all such errors as be assigned or found in or upon any such judgment, and thereupon to reverse or affirm the said judgment as the law requires, other than for errors to be assigned or found for or concerning the jurisdiction of the said court of king's bench, or for any want of form in any writ, return, plaint, bill, declaration or other pleading, process, verdict, or proceeding whatsoever; and after the said judgment shall be affirmed or reversed, to remove and send back the said record and all things concerning the same into the said court of king's bench, that such farther proceedings may be thereon had, as well for execution as otherwise, as shall appertain, as in the said statute is more fully contained: And because in the record and proceedings, as also in the rendition of the judgment of a plea which was in our court before us by bill between *Henry Gage*, esq; and *Elizabeth Acton*, widow, administratrix of all and singular the goods and chattels which belonged to *John Acton*, gent. who

who died intestate, (as it is said) lately called *John Acton* of *Ripe*, otherwise *Eckington* in the county aforesaid, gent. for this, that the said *Elizabeth* should render to the said *Henry* 60*l.* there is (as it is said) a manifest error to the great damage of the said *Henry*, as by his complaint we hear: Which said error in no manner concerns us or the jurisdiction of our said court of our king's bench, or any want of form in any writ, return, plaint, bill, declaration or other pleading, process, verdict or proceeding whatsoever, as we are informed: We therefore willing the error (if any shall be) should according to the form of the statute aforesaid be corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment thereon be given, then the record and proceedings aforesaid, with all things concerning the same before the said justices of the common bench and the barons of our exchequer aforesaid, into our exchequer chamber aforesaid on *Saturday*, to wit, the 25th day of *October* next ensuing, you cause to be brought, that the said justices and barons, the record and proceedings aforesaid being seen and examined, may farther cause to be done therein what of right and according to the form of the statute aforesaid shall be to be done: Witness ourself at *Westminster* the 8th day of *July* in the sixth year of our reign.

[214]

Wychyffe.

The answer of John Holt, knt. chief justice within named.

The record and proceedings of the plea whereof mention is within made, with all things concerning the same, to the justices and barons within specified at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded,

J. Holt.

Pleas before the lord the king at Westminster of Hillary term in the ninth year of the reign of the lord William the third, now king of England, &c. Roll. 293.

Suffex, to wit. *H*enry Gage, esq; puts in his place *Nathaniel Trayton* his attorney against *Elizabeth Acton*, widow, administratrix of all and singular the goods and chattels, rights and credits which belonged to *John Acton*, gent. deceased, who died intestate, lately called *John Acton* of *Ripe*, otherwise *Eckington* in the county aforesaid, gent. in a plea of debt. Warrant of attorney for the plaintiff.

Suffex, to wit. *E*lizabeth Acton, widow, administratrix of all and singular the goods and chattels, rights and credits, which belonged to *John Acton*, gent. deceased, who died intestate, lately called *John Acton* of *Ripe*, otherwise *Eckington* The like for the defendant.

Eckington in the county aforesaid, gent. puts in her place *John Lilly* her attorney against *Henry Gage*, esq; in a plea of debt.

Debt for rent on
articles against an
administratrix.

Suffex, to wit. **BE** it remembered, that otherwise, to wit, in *Trinity* term last past, before the lord the king at *Westminster* came *Henry Gage*, esq; by *Nathaniel Trayton* his attorney, and produced here in the court of the said lord the king then there his certain bill against *Elizabeth Acton*, widow, administratrix of all and singular the goods and chattels, rights and credits, which belonged to *John Acton*, gent. deceased, who died intestate, lately called *John Acton of Ripe*, otherwise *Eckington* in the county aforesaid, gent. in the custody of the marshal, &c. in a plea of debt; and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Suffex*, to wit, *Henry Gage*, esq; complains of *Elizabeth Acton*, widow, administratrix of all and singular the goods and chattels, rights and credits, which belonged to *John Acton*, gent. deceased, who died intestate, lately called *John Acton of Ripe*, otherwise *Eckington* in the county aforesaid, gent. being in the custody of the marshal of the *Marshalsey* of the lord the king before the king himself, in a plea that she render to him 60*l.* of lawful money of *England*, which she unjustly detains from him, for this, to wit, that whereas by certain articles made at *Hailsham* in the county aforesaid, on the 11th day of *January* in the year of the Lord 1689, between the said *Henry*, by the name of *Henry Gage of Brambletye* within the parish of *Eastgrimstead* in the county of *Suffex*, esq; of the one part, and the said *John*, by the name of *John Acton of Ripe*, otherwise *Eckington* in the county aforesaid, gent. of the other part, the other part whereof sealed with the seal of the said *John* the same *Henry* here in court produces; bearing date the same day and year, the said *Henry* demised to the said *John Acton* all those two several pieces or parcels of land called the *Deanes*, containing by estimation 22 acres, with the appurtenances in *Hailsham* aforesaid in the county aforesaid, and also all those four pieces of marsh-land called *Hornshall Marsh*, containing by estimation 32 acres, with the appurtenances in *Hailsham* aforesaid; To hold to the said *John Acton*, his executors and administrators from the feast of the birth of our Lord then last past for 11 years, at and under the yearly rent of 30*l.* to be paid half-yearly during the said term, to wit, on the feasts of *St. John* the baptist and the Birth of our Lord by equal partions, or within 21 days after those feasts, as by the said articles more fully is manifest and appears: By virtue of which said demise the same *John Acton* into the demised premises with the appurtenances entred, and was thereof possessed until to and upon the feast of the Birth of our Lord in the year of the Lord 1696, and for 21 days then next following, and 60*l.* of the rent aforesaid for two years ended at the said feast of the Birth of our Lord

Lord in the year of the Lord 1696, and for the space of 21 days then next following, in the life-time of the said *John* were in arrear and yet are unpaid; whereby an action accrued to the same *Henry* to demand and have of the said *John Acton* in his life-time, and of the said *Elizabeth* after the death of him the said *John* (to which said *Elizabeth* administration of all and singular the goods and chattels, rights and credits, which belonged to the said *John* at the time of his death, after his death at *Hailsham* aforesaid in the county aforesaid was committed) the said 60*l.* Nevertheless the said *John* in his life-time, and the said *Elizabeth* after his death, altho' often required, &c. the said 60*l.* to the same *Henry* have not yet paid, but have hitherto altogether refused to pay him the same, and the said *Elizabeth* doth yet refuse, to the damage of the said *Henry* 20*l.* And therefore he produces the suit, &c.

And now on this day, to wit, *Monday* next after the octave of *St. Hillary* in this same term, until which day the said *Elizabeth* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster* comes as well the

said *Henry Gage* by his attorney aforesaid, as the said *Elizabeth Acton* by *John Lilly* her attorney: And the same *Elizabeth* defends the force and injury when, &c. and as to the 30*l.* parcel of the said 60*l.* in the declaration aforesaid mentioned to be in arrear of the rent aforesaid for the first year of the said two years, the same *Elizabeth* says, that she doth not detain from the said *Henry* the same 30*l.* nor any parcel thereof, in manner and form as the said *Henry* above against her complains:

And of this she puts herself on the country: And the said *Henry* thereof likewise, &c. And as to the other 30*l.* residue of the said 60*l.* the same *Elizabeth* says, that the said *Henry Gage* ought not to have or maintain his action aforesaid thereof against her, because she says, that in the life-time of the said *John*, and while she the said *Elizabeth* was sole, to wit, on the 20th day of *January* 1686, at *Hailsham* aforesaid in the county aforesaid, he the said *John Acton*, by the name of *John Acton* of *Ripe* in the county of *Sussex*, gent. by his certain writing obligatory sealed with the seal of the said *John*, and to the court of the said lord the king now here shewn, bearing date the said 20th day of *January* 1686 above said, acknowledged himself to be held and firmly bound to the said *Elizabeth* while she was sole, then by the name of *Elizabeth Reynolds* of *Ripe* in the county aforesaid, spinster, in 2000*l.* of lawful money of *England*, to be paid to the same *Elizabeth* when he should be thereto after required, with a condition to the said writing obligatory subscribed, reciting, that whereas a marriage was by the blessing of God in a short time to be solemnized between the said *John Acton* and her the said *Elizabeth*, so that if the said *Elizabeth* should survive him the said *John*, and that the said *John* should die before the said *Elizabeth*, then if the said *John Acton* should leave, or if his heirs, executors or assigns, should well and truly pay, or cause to be paid, to the said *Elizabeth*,

her

Imparlanee,

As to 30*l.* she doth not detain,

As to the residue, that the intestate gave her a bond before marriage to leave her 1000*l.*

But did not leave
her 1000*l.*

Administration
granted.
Pract. Reg.
37, 43.

[216]
230*l.* came to
her hands after
administration,
which she retains.

her executors, administrators or assigns, the full and whole sum of 1000*l.* of lawful money of *England* within one month after the death of the said *John Acton*, without fraud or deceit, that then the obligation aforesaid should be void, otherwise to stand and remain in full force and virtue, as by the writing obligatory aforesaid, and the condition of the same writing obligatory here in court produced, more fully appears: And the same *Elizabeth* farther says, that, afterwards, to wit, on the first day of *March* 1686 aforesaid, at *Hailsham* aforesaid, she the said *Elizabeth* took for her husband the said *John Acton*, and afterwards, and before the exhibition of the said bill of the said *Henry*, to wit, on the first day of *March* 1696, he the said *John Acton* at *Hailsham* aforesaid in the county aforesaid died intestate, and did not leave to the said *Elizabeth* the sum of 1000*l.* nor any penny thereof, and that at any time after the death of the said *John Acton* hitherto the sum of 1000*l.* or any part thereof, hath not been paid by the heirs or assigns of the said *John Acton*, or any of them: And the same *Elizabeth* farther says, that after the death of the said *John*, to wit, on the 13th day of *March* in the year of the Lord 1696, at *Hailsham* aforesaid in the county aforesaid, administration of all and singular the goods and chattels, rights and credits, which belonged to the said *John Acton* at the time of his death, to the same *Elizabeth* by *Thomas Briggs*, doctor of laws, commissary or official principal of the reverend father in Christ *John* by divine permission lord bishop of *Chester*, in and through the whole archdeanary of *Lewis* in the diocese of *Chester* lawfully constituted, to whom the commission of the administration aforesaid of right belonged, in due form of law was committed: After the commission of which said administration divers goods and chattels which belonged to the said *John* at the time of his death to the value of 230*l.* and not more, by virtue of the administration aforesaid came to the hands of her the said *Elizabeth*, to wit, at *Hailsham* aforesaid in the county aforesaid; which said goods and chattels the same *Elizabeth* retains in her hands in part of satisfaction of the writing obligatory aforesaid: And the same *Elizabeth* farther says, that on the day of the exhibition of the bill aforesaid of him the said *Henry*, or before or ever after, no other or more goods and chattels which belonged to the said *John* at the time of his death came to her hands, except the said goods and chattels to the value of the said 230*l.* and no more, and which are not sufficient to satisfy the same *Elizabeth* the said sum of 1000*l.* in the condition of the writing obligatory aforesaid mentioned: And this she is ready to verify; Wherefore she prays judgment if the said *Henry* ought to have or maintain his action aforesaid thereof against her, &c. with this, that the same *Elizabeth* will verify that the writing obligatory aforesaid yet remains in its full force and effect not annulled or satisfied, and that the said *John Acton* in the writing obligatory aforesaid mentioned, and *John Acton* in the declaration and plea aforesaid mentioned, are one and the same person, and not other nor divers.

Edw. Northey.

And

And the said *Henry Gage* says, that by any thing by the said *Elizabeth* above in pleading alledged ought not to be precluded from his action aforesaid thereof against the said *Elizabeth* had, because he says, that the plea aforesaid by the said *Elizabeth* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *Henry* from his action aforesaid thereof against the said *Elizabeth* had; to which said plea he the same *Henry* hath no necessity, nor is by the law of the land obliged, in any manner to answer: And this he is ready to verify: Wherefore for want of a sufficient answer in this behalf the same *Henry* prays judgment and his debt aforesaid, together with his damages by reason of the detention of the said debt, to be adjudged to him, &c. Demurrer.

And the said *Elizabeth* says, that the plea aforesaid by her the said *Elizabeth* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to preclude the said *Henry* from his action aforesaid thereof against the said *Elizabeth* had: which said plea, and the matter in the same contained, she the said *Elizabeth* is ready to verify and prove, as the court, &c. And because the said *Henry* doth not answer the said plea, nor hitherto any way deny the same, she the said *Elizabeth* as before prays judgment, and that the said *Henry* may be precluded from his action aforesaid thereof against her had; but because the court of the said lord the king now here are not yet advised to give their judgment and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Wednesday* next after 15 days of *Easter* to hear their judgment of and upon those premisses, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Friday* next after the morrow of the Holy *Trinity* to hear their judgment thereon, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies; but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Monday* next after three weeks of St. *Michael* to hear their judgment thereon, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Monday* next after the octave of St. *Hillary* to hear their judgment thereon, because Joinders. Continuance. Easter. Trinity. Michaelmas. Hillary.

Easter.

[217]

Trinity.

Michaelmas.

Hillary.
Pref. to Lilly of
Assise.Judgment for
the defendant,
signed 21 Feb.
1699.

because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Wednesday* next after 15 days of *Easter* to hear their judgment thereon, because the court of the lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Friday* next after the morrow of the Holy *Trinity* to hear their judgment thereon, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid, but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Monday* next after three weeks of *St. Michael* to hear their judgment thereon, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Saturday* in fifteen days of *St. Hillary* to hear their judgment thereon, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; whereupon all and singular the premisses being seen, and by the court of the said lord the king now here more fully understood, and mature deliberation being thereon had, it seems to the court of the said lord the king now here, that the plea aforesaid by the said *Elizabeth* in manner and form above pleaded, and the matter in the same contained, are good and sufficient in law to preclude the said *Henry* from his action aforesaid thereof against the said *Elizabeth* had: It is therefore considered, that the said *Henry Gage* take nothing by his bill aforesaid, but for his false plaint be thereof in mercy: And the said *Elizabeth Acton* may go thence without day, &c. And it is farther considered, that the said *Elizabeth Acton* recover against the said *Henry Gage* 14 l. 10 s. for her costs and charges by her about her defence in this behalf sustained, to the same *Elizabeth* by the court of the said lord the king now here with her assent, according to the form of the statute

statute in such case made and provided, adjudged: And the said *Elizabeth Acton* may have thereof execution, &c. 23 H. 8. c. 15.

Adjudged in this case that the debt was only suspended, not extinguished. See Salk. 327.

Twitty and Bell against Morley.

AND it is to be known, that after the judgment aforesaid was given, and before this day, to wit, the 29th day of May in the fourth year of the reign of the now lord the king, the said *George Twitty* died, to wit, at *London* aforesaid in the parish and ward aforesaid: And the said *John Bell* on the said octave of the Holy Trinity by *Stretbill Harrison* his attorney comes here into court and immediately says, that there is no error in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, and prays that the court of the said lord the king now here may proceed to the examination as well of the record and proceedings aforesaid, as the matters aforesaid above for error assigned, and that the judgment aforesaid may in all things be affirmed, &c.

Suggests the death of one of the defendants, and then pleads no error.

See 18 Car. 2. Pract. Reg.

Acton and Sumner.

Chester, to wit. BE it remembered, that otherwise, to wit, in Trinity term last past before the lady *Anne* late queen of Great Britain, &c. came *John Sumner* by *J. Whishaw* his attorney, and produced here in the court of the said lady the queen then there his certain bill against *Richard Acton*, *Ralph Maddock* and *Robert Wilcoxon*, in the custody of the marshal, &c. in a plea of trespass: And there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*: Which said bill follows in these words, to wit, *Chester*, to wit, *John Sumner* complains of *Richard Acton*, *Ralph Maddock* and *Robert Wilcoxon*, being in the custody of the marshal of the Marshalsey of the lady the queen before the queen herself, for this, that they the said *Richard*, *Ralph* and *Robert*, 29th day of March in the year of the Lord 1714, with force and arms the house and stables of him the said *John* at *Whitegate* in the county of *Chester* aforesaid broke and entered, and the gelding of him the said *John* of the price of 10*l.* at the parish of *Whitegate* aforesaid then found took and carried away, and other outrages on the said *John* then and there committed, against the peace of the said lady the now queen, and to the damage of him the said *John* 20*l.* And therefore he produces the suit, &c.

Error in an action in the king's bench for a trespass in the county of *Chester*.

And now on this day, to wit, Monday next after the octave of St. Hillary in this same term, until which day the said *Richard*, *Ralph* and *Robert* had leave to imparl to the bill aforesaid, and then to answer. &c. before which day the said lady the queen departed this life, before the lord *George* now king of Great Britain,

[218]
Imparlance.

Justification of
the taking for a
poor's rate.

43 El. c. 2,
§ 19.

Repl. *De injuria
sua propria.*

Suggestion.

Britain, &c. at *Westminster* come as well the said *John* by his attorney aforesaid, as the said *Richard, Ralph* and *Robert*, by *Nathaniel Hickman* their attorney: And the same *Richard, Ralph* and *Robert* defend the force and injury when, &c. and as to the coming with force and arms, and whatever is against the peace of the lady the late queen, say, that they are in no wise guilty thereof: And of this they put themselves on the country: And the said *John* thereof likewise: And as to the residue of the trespass above supposed to be committed, the same *Richard, Ralph* and *Robert* say, that the said *John* ought not to have or maintain his action aforesaid thereof against them, because they say, that at the time when the residue of the trespass aforesaid is supposed to be committed, the same *Richard* and *Ralph* were overseers of the poor of the town of *Over* in the county of *Chester* aforesaid, and the said *Robert* was one of the constables of the same town lawfully appointed; and that they the same *Richard* and *Ralph* as overseers of the town aforesaid, and the said *Robert* at the request and in aid of the said *Richard* and *Ralph*, by the authority and according to the tenure, purport and effect of a certain act made and provided in a parliament of the lady *Elizabeth* late queen of *England*, held at *Westminster* in the county of *Middlesex* in the 43d year of her reign, at the said time when, &c. the house and stables of the said *John*, within the town aforesaid in the said parish of *Whitegate* in the county of *Chester* aforesaid, broke and entered, and the said gelding of him the said *John* at the parish of *Whitegate* aforesaid then and there found took and carried away: And this they are ready to verify: Wherefore they pray judgment if the said *John* ought to have or maintain his action aforesaid thereof against them, &c.

And the said *John*, as to the said plea of the said *Richard, Ralph* and *Robert* above last pleaded, says, that he by any thing in that behalf pleaded ought not to be precluded from his action aforesaid thereof against them had, because he says, that the said *Richard, Ralph* and *Robert* committed the said residue of the trespass aforesaid in the same plea mentioned, in the form as the same *John* above thereof against them complains, of their own wrong without such cause by them in that behalf pleaded: And this he prays may be inquired of by the country: And the said *Richard, Ralph* and *Robert* likewise, &c. And because the several issues aforesaid between the parties aforesaid above joined ought to be tried by the men of the county palatine of *Chester*, where the writ of the lord the king doth not run, and not elsewhere: Therefore let the record of the plea aforesaid be sent to the justices of the said lord the king of the said county of *Chester*, so that the same justices, by writ of the said lord the king of that county duly to be made, may cause the sheriff of the same county to be commanded that he cause to come before the same justices of the said lord the king of the county of *Chester* aforesaid, at the next sessions for that county after that record shall

shall be delivered to them, twelve free and lawful men of the body of the county palatine of *Chester* aforesaid, by whom, &c. and who neither, &c. to recognise, &c. because as well, &c. And when that averment and those issues shall be made out and tried, and then the said justices the record of the plea aforesaid, with all that which shall be therein done in the court of the said lord the king there before them, may send to the lord the king at *Westminster*, at a certain day which the same justices of the county palatine aforesaid to the parties aforesaid in the same court there shall before appoint, to hear therof their judgment, &c. And it is said to the said *John* that he prosecute with effect, at his peril, &c. Afterwards, to wit, from the day of *Easter* in one month then next following, which said day the said *John*, and the said *Richard*, *Ralph* and *Robert* had by the appointment of *Joseph Jekyll*, knt. serjeant of the said lord the king at law, justice of the said lord the king of *Chester*, and *Edward Jefferies*, esq; another justice of the said lord the king of the county aforesaid, to hear thereof their judgment here, to wit, at *Westminster*, comes the said *John* by his attorney aforesaid: And the said justices at *Chester* send here the record aforesaid with all that was done before them at *Chester* in these words, to wit. And afterwards, to wit, at the sessions of *Chester*, held at *Chester* in the county of *Chester* in the common hall of pleas of the county aforesaid on *Monday*, to wit, 11th day of *April* in the 1st year of the reign of the lord *George* by the grace of God of *Great Britain*, &c. before *Jo. Jekyll*, knt. serjeant of the, said lord the king at law, justice of the said lord the king of *Chester*, and *E. Jefferies*, esq; another justice of the said lord the king of the county aforesaid, being the next sessions for the county aforesaid after the within written record was delivered to the said justices, here come as well the said *John Sumner* by *L. G.* his attorney, as the within named *Richard*, *Ralph* and *Robert*, by *J. B.* their attorney; and the said *John* prays a writ of the lord the king to cause to come 12, &c. by whom, &c. and who neither, &c. to recognise, &c. because as well, &c. to be directed to the sheriff of the county of *Chester* aforesaid to try the issue within written; and it is granted to him, returnable here on *Tuesday* next coming in this same sessions: The same day is given to the parties aforesaid here, &c. On which *Tuesday* before the said justices here come as well the said *John Sumner*, as the said *Richard Aiton*, *Ralph Maddock* and *Robert Wilcoxson*, by their attornies aforesaid; and *Richard Walthall*, esq; the sheriff of the county aforesaid, now returns here the writ of *Venire facias* aforesaid to him in form aforesaid directed, together with a panel of the names of the jury to that writ annexed, in all things executed; and the jurors thereof impanelled being called, none of them come: therefore that jury is respited here until *Wednesday* next coming in this same sessions for want of jurors, &c. And the sheriff of the county aforesaid is commanded, that he then have here the bodies of the jurors aforesaid, and that he add to them

The postea.

[219]

Venire facias

to them a *decem tales* against the same day, &c. The same day is given to the parties aforesaid here, &c. On which *Wednesday* before the said justices here comes as well the said *John Sumner*, as the said *Richard Aiton*, *Ralph Maddock* and *Robert Wilcoxon*, by their attornies aforesaid; and the said sheriff of the county aforesaid now returns here the writ of *Habeas corpora* aforesaid to him in form aforesaid directed, together with a panel, as well of the names of the jurors aforesaid first impanelled, as of the names of the *decem tales* added anew to the said writ annexed, in all things served and executed; and the jurors thereof impanelled being called, to wit, *John Stubbs* of *Blackenhall*, gent. &c. (*reciting all the twelve*) come who to say the truth of the premises being elected, tried and sworn, say on their oath, that the said *Richard Aiton*, *Ralph* and *Robert* committed the residue of the trespass within specified in the same plea mentioned in manner and form as the said *John Sumner* within thereof against them complains, of their own wrong, without such cause by them in that behalf within pleaded, and they assents the damage of him the said *John Sumner* by reason of the premises aforesaid, beside his costs and charges by him about his suit in this behalf expended, to 30s. 10 $\frac{1}{4}$ d. and for those costs and charges to 6s. And upon this the said justices appoint the parties aforesaid to be before the lord the king at *Westminster* from the day of *Easter* in one month next to come to hear thereof their judgment; but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the said *John* before the lord the king at *Westminster* until *Friday* next after the morrow of the Holy *Trinity* to hear their judgment of and upon those premises, because the court of the said lord the king here thereof not yet, &c. On which day before the lord the king at *Westminster* comes the said *John* by his attorney aforesaid; and because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is farther given to the said *John* before the lord the king at *Westminster* until *Monday* next after three weeks of *St. Michael* to hear their judgment of and upon those premises, because the court of the said lord the king here thereof not yet, &c. On which day before the said lord the king at *Westminster* comes the said *John* by his attorney aforesaid; and because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is farther given to the said *John* before the lord the king at *Westminster* until *Monday* next after the octave of *St. Hillary* to hear their judgment of and upon those premises, because the court of the said lord the king here thereof not yet, &c. On which day before the lord the king at *Westminster* comes the said *John* by his attorney aforesaid; and because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is farther given to the

Continuance.

the said *John* before the lord the king at *Westminster* until, &c. because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* comes the said *John* by his attorney aforesaid; upon which all and singular the premisses being seen, and by the court of the said lord the king here more fully understood, it is considered, that the said *John* recover against the said *Richard Aiton*, *Ralph Maddock* and *Robert Wilcoxon*, his damages aforesaid, by the jury aforesaid in form aforesaid assessed, as also 28*l.* 3*s.* 1 $\frac{3}{4}$ *d.* for his costs and charges aforesaid, to the same *John* with his assent by the court of the said lord the king now here of increase adjudged, which said damages in the whole amount to 30*l.* &c.

Judgment for
the plaintiff,
sign'd 26 May,
1716.

Except. If this action be so local as that it must be brought in the county palatine of *Chester*, and not by *Latitat* out of the king's bench at *Westminster*. By all the judges and barons adjudged, that the action was well commenced by *Latitat*, and need not be sued in the court of the county palatine.

12 Co. 114.
Dy. 263.

But agreed that this might have been pleaded in abatement.
Pract. Reg. 23.

Howard and Taylor.

[220]

AFTERWARDS, to wit, on the 9th day of *June* in the second year of the reign of the lord *George* now king of *Great Britain*, &c. before the same lord the king at *Westminster* come one *George Sedgemore* and the said *Anne* (who by the name of *Anne Taylor*, otherwise *Seymour* as aforesaid, was impleaded) his wife in their proper persons, and produce here into the court of the said now lord the king a certain writ of the said lord the king to correct error of and upon the judgment aforesaid above specified; which said record and proceedings aforesaid in the court of the said lord the king before the king himself now remain, and pray that the said writ may be allowed; and by the same court here it is allowed to them, &c. which said writ follows in these words, to wit, *George*, &c. To our justices assigned to hold pleas before ourself, greeting: Because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us by bill between *Anne Howard* and *Anne Taylor*, otherwise *Seymour*, in a certain trespass on the case to the same *Anne Howard* by the said *Anne Taylor*, otherwise *Seymour*, committed, as it is said, a manifest error has happen'd, to the great damage of *George Sedgemore* and the said *Anne* his wife, lately called *Anne Taylor*, otherwise *Seymour*, as by their complaint we understand: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment therein be given, then the record and process aforesaid, which before you now remain, as it is said, being inspected, you farther cause to be done therein to correct that error what of right and according to the law and custom of *England* shall be to be done. *Witness* our-

Error coram va-
bit residen.

The writ of er-
ror.

Coverture in the
plaintiff.

Coverture in the
defendant.

Demurrer.

Joinder.

self at *Westminster* 8th day of *June* in the second year of our reign, *Hart*. Whereupon the said *G. Sedgemore* and *Anne* his wife say, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is a manifest error in this, to wit, that before the day of the exhibition of the bill of the said *Anne Howard* against the said *Anne Sedgemore* by the name of *Anne Taylor*, otherwise *Seymour*, and before the rendition of the judgment aforesaid, to wit, 18th day of *July* 1712, she the same *Anne Howard* took to husband one *George Howard*, to wit, at the parish of *St. Clement Danes* in the county of *Middlesex* aforesaid, and that she the same *Anne* at the time of the exhibition of the bill aforesaid, and at the time of the rendition of the judgment aforesaid, and ever after hitherto was and yet is covert of the said *G. Howard* her husband, to wit, at the parish of *St. Clement Danes* aforesaid in the county of *Middlesex* aforesaid: There is likewise an error in this, to wit, that before the day of the exhibition of the bill aforesaid of the said *Anne Howard* against the said *Anne Sedgemore* by the name of *Anne Taylor*, otherwise *Seymour*, and before the rendition of the judgment aforesaid, to wit, the fifth day of *October* in the second year aforesaid, she the said *Anne Taylor*, otherwise *Seymour*, took to her husband the said *George Sedgemore*, to wit, at the parish of *St. Clement Danes* aforesaid in the county of *Middlesex* aforesaid; and that she the same *Anne* at the time of the exhibition of the said bill, and at the time of the rendition of the judgment aforesaid, and ever after hitherto was and yet is covert of the said *George Sedgemore* her husband, to wit, at the parish of *St. Clement Danes* aforesaid in the county aforesaid: And this they are ready to verify.

And the said *Anne Howard* in her proper person freely here in court comes and immediately says, that by any thing by the said *George Sedgemore* and *Anne* his wife above for error assigned the judgment aforesaid ought not to be annulled or reversed, because she says, that the matter aforesaid in manner and form aforesaid by the said *G. Sedgemore* and *Anne* his wife above for error in the judgment and proceedings aforesaid assigned are not sufficient in law to annul or reverse the judgment aforesaid; to which she the same *Anne Howard* hath no necessity, nor is by the law of the land obliged, in any manner to answer: And this she is ready to verify: Wherefore she prays judgment, and that the judgment aforesaid for the same *Anne Howard* against the said *Anne Taylor*, otherwise *Seymour*, in form aforesaid given, may be in all things affirmed, &c.

And the said *George Sedgemore* and *Anne* his wife say, that the errors aforesaid by them the said *George Sedgemore* and *Anne* his wife above in form aforesaid assigned, and the matter in the same contained, are good and sufficient in law to annul and reverse the judgment aforesaid, and to compel the said *Anne Howard* to rejoin to those errors; which said matter the same *G. Sedgemore* and *Anne* his wife are ready to verify and prove, as the court, &c. And because the said *A. Howard* doth not rejoin to those errors,
nor

nor hitherto any way deny them, they the same *G. Sedgemore* and *Anne* his wife as before pray that the judgment aforesaid may be reversed, annulled and held as void, and that they may be restored to all things which they by reason of the judgment aforesaid have lost, &c. And because the court of the lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until to hear their judgment thereon, because the court of the said lord the king here thereof not yet, &c.

Barnardiston and Chapman.

[221]

Mich. 1 George, Rot. 1433.

Afterwards, to wit, *Tuesday* next after three weeks of *St. Michael* in that same term, before the lord the king at *Westminster* come the said *Henry Chapman* and *Matthew Smith* by *Edward Layton* their attorney, and say, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that where by the record aforesaid it appears that judgment is given for the said *Nathaniel* and *Samuel* against them the said *Henry* and *Matthew*; nevertheless the said judgment by the law of the land of this kingdom ought to have been given for the said *H.* and *M.* against the said *N.* and *S.* therefore in that there is manifest error: There is error also in this, to wit, that the original writ of them the said *N.* and *S.* in the plea aforesaid obtained, and now remaining in the custody of the *Custos Bre-vium* of the said lord the king of the bench and of record filed, was obtained out of the court of chancery of the lady *Anne* the late queen at *Westminster* 7th day of *March* in the 13th year of the reign of the same late queen, returnable in the court of the said lady the late queen of the bench before the justices of the same late queen at *Westminster*, on the morrow of the Holy *Trinity* then next following; which said writ was directed to the then sheriffs of *London*, and commanded the sheriffs of *London* aforesaid to put by surety and safe pledges them the said *H.* and *M.* by the names of *H. Chapman* late of the parish of *St. Giles Cripplegate* in the county of *Middlesex*, cord-wainer, and *M. Smith* late of the parish of *St. Catherine* in the county of *Middlesex*, yeoman, that they might be before the justices of the same late queen at *Westminster* on the morrow of the Holy *Trinity* aforesaid, to shew why with force and arms they had broke the close of the said *N.* and *S.* and committed other outrages on them, to the great damage of the said *N.* and *S.* and against the peace of the said late queen, but not for the causes in the declaration aforesaid specified, as by the original writ aforesaid remaining of record in the custody of the said *Custos Bre-vium* of the now lord the king of the bench aforesaid more

Errors assigned,
that the original
was a *Clausum*
fregit.

Averment, that the judgment was obtained on that original which does not warrant the judgment.

A *Certiorari* prayed.

The *Certiorari*.

The return of the *Custos Brevium*.

Salk. 781, 762.

The original corrected.

fully is manifest and appears: And the same *H.* and *M.* in fact say, that the plea aforesaid, and the judgment aforesaid above had and obtained, was had and obtained on that original writ and no other; wherefore for that the writ aforesaid doth not maintain the declaration and the proceedings thereon founded, the same *H.* and *M.* say, that the original writ aforesaid is not sufficient in law, and that the declaration aforesaid and the matter in the same contained is likewise insufficient in law, and likewise not warranted by that original writ; and therefore in that the judgment aforesaid is manifestly erroneous: And the same *H.* and *M.* pray a writ of the said lord the king to be directed to the said *Custos Brevium*, to certify the said lord the king more fully of the truth thereof; and it is granted to them, &c. Which said writ of *Certiorari* so prayed and granted follows in these words; to wit, *George* by the grace of God of *Great Britain, France and Ireland*, king, defender of the faith, &c. To *Henry* viscount *St. John*, baron of *Battersey*, keeper of the writs and rolls of our court of the bench, greeting: Being willing for certain reasons to be certified, whether a certain original writ of the lady *Anne* the late queen, between *N. Barnardiston* and *S. Marriot*, and *H. Chapman* late of the parish of *St. Giles Cripplegate* in the county of *Middlesex*, cordwainer, and *M. Smith* late of the parish of *St. Catharine* in the county of *Middlesex*, yeoman, in a plea why they the said *H.* and *M.* with force and arms had broke the close of them the said *N.* and *S.* at *London*, and committed other outrages on them, to the great damage of them the said *N.* and *S.* and against the peace of the same late queen, be filed under your custody of record of *Trinity* term in the 13th year of the reign of the same late queen, or not; We command you, that searching the original writs of the city of *London* of the said *Trinity* term in the 13th year of the reign of the same late queen aforesaid in your custody filed of record, you without delay certify to us, wheresoever we shall be in *England*, what of the said writ between the parties aforesaid in the plea aforesaid you shall find, together with this writ. Witness *Thomas* lord *Parker*, baron of *Macclesfield*, at *Westminster* 23d day of *October* in the 3d year of our reign. Which said keeper of the writs and rolls aforesaid returned and certified to the lord the king, that by virtue of that writ to him directed having searched the original writs of the said late queen of the city of *London* of *Trinity* term in the 13th year of the reign of the said late queen in his custody filed of record, there is a certain original writ between the parties in the same writ named in the plea in the same writ mentioned in his custody filed of the same term, the tenor of which said writ, together with the return of the same, follows in these words, to wit, *Anne*, &c. To the sheriffs of *London* greeting: If *N. Barnardiston* and *S. Marriot* shall make you secure to prosecute their suit, then put by sureties and safe pledges *H. Chapman* late of and *M. Smith*

Smith late of that they be before our justices at *Westminster* in the morrow of the holy *Trinity*, to shew why with force and arms they broke the close of the said *Nathaniel* and *Samuel* at *London*, and committed other outrages on him, to the great damage of the said *Nathaniel* and *Samuel* and against our peace: And have there the names of the pledges and this writ. Witness ourself at *Westminster* 7 *May* in the 13th year of our reign. *Hart*. Pledges to prosecute *John Doe* and *Richard Roe*. The within named *Henry* hath nothing in our bailiwick whereby he can be attached,

Joshua Sharpe, knt. }
and } sheriffs.
Francis Forbes, knt. }

Which said writ of *Certiorari*, together with the return of the same, among the records without day of this *Michaelmas* term is filed: And upon this the said *Henry* and *Matthew* pray a writ of the lord the king, to warn the said *Nathaniel* and *Samuel* to be before the lord the king to hear the record and proceedings aforesaid; and it is granted them: And hereupon the said *Nathaniel* and *Samuel* by *John Saunder* their attorney freely here into court immediately come; and (protesting that the original writ (on which the declaration and proceedings aforesaid in the record aforesaid here above certified is founded) was a certain original writ between the parties aforesaid in a certain plea of trespass on the case, according to the tenor and effect of the declaration aforesaid) for plea the same *Nathaniel* and *Samuel* say, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid; and pray that the court of the lord the king now here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above for error assigned, and that the judgment aforesaid may be in all things affirmed, &c. But because, &c.

Scire facias
prayed.

Defendants appear and (by protestation) plead there is no error.

This cause produced the act 5 Geo. for amending writs of error.

Bradshawe and Gower.

England, to wit. THE lord the king sent to his trusty and well beloved *P. King*, knt. his chief justice of the bench, his writ close in these words, to wit, *George* &c. To our trusty and well beloved *Peter King*, knt. our chief justice of the bench, greeting: Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in our court before you and your companions our justices of the bench by our writ, between *John Bradshawe* who prosecutes as well for us as for himself, and *Henry Glover* late of *London*, clerk, for this, that the same *Henry* should render to us and the said *John* 400*l.* as it is said, a manifest error has happened to the great damage of the said *Henry*, as on his com-

Error in debt
qui tam.

plaint we have understood; We willing that the error, if any hath been, should be duly corrected, and full and speedy justice done both to us and the said *John* and *Henry* in this behalf, command you, if judgment be therein given, that then you under your seal distinctly and openly send the record and proceedings aforesaid with all things concerning the same to us, together with this writ, so that we may have the same from the day of *St. Michael* in three weeks wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may cause farther to be done therein to correct that error what of right and according to the law and custom of *England* shall be to be done. Witness ourself at *Westminster* 4th day of *July* in the 3d year of our reign.

Layton.

Bradshawe and Gower.

Debt qui tam on
10 A. c. 19.
against a parson
for marrying
without publiſt.
ing the banns.
7 & 8 W. 3.
c. 35.

London, to wit. *Henry Gower* late of *London*, clerk, was summoned to answer as well to the now lord the king as to *John Bradshawe*, who as well for the said lord the king as for himself in this behalf prosecutes, in a plea that he render as well to the same now lord the king as to the said *John*, who as well, &c. 400 l. of lawful money which he owes them and unjustly detains, &c. And whereon the same *John*, who as well, &c. by *Richard Darby* his attorney says, that within one year next before the day of the obtaining the original writ aforesaid, to wit, on the 3d day of *January* in the 3d year of the reign of the now lord the king at *London* aforesaid, to wit, in the parish of *St. Bridget* in the ward of *Farringdon Without*, the said *Henry* being a person in holy orders did marry a certain man, by the name of *Robert Henley*, to a certain woman by the name of *E. Pickering*, without any publication of the banns of matrimony between the said *Robert* and *Elizabeth* according to law, and without any licence first had and obtained from the proper ordinary for the said marriage, against the form of the statute in such case thereof lately made and provided; whereby an action accrued to the said now lord the king and the said *J. Bradshawe*, who as well, &c. to demand and have of the said *Henry* 100 l. parcel of the said 400 l. And the said *John*, who as well, &c. farther says, that within one year next before the day of the obtaining the original writ aforesaid, to wit, on the 12th day of *January* aforesaid in the third year abovesaid, at *London* aforesaid in the parish and ward aforesaid, the said *Henry* being a person in holy orders did marry a certain other man, by the name of *W. H.* to a certain other woman by the name of *M. S.* without any publication of the banns of matrimony between the said *W. H.* and *M. S.* according to law, and without any licence first had and obtained for the marriage aforesaid last mentioned from any proper ordinary whatsoever, against the form of the statute aforesaid in such case thereof lately made and provided; whereby an action

accrued to the said now lord the king and the said *J. Bradshawe*, who as well, &c. to demand and have of the said *Henry* other 100*l.* other parcel of the said 400*l.* And the said *J. Bradshawe*, who as well, &c. farther says, that within one year next before the day of obtaining the original writ aforesaid, to wit, on the 10th day of *February* in the third year aforesaid, at *London* aforesaid in the parish and ward aforesaid, the said *Henry* being a person in holy orders did marry a certain other man, by the name of *J. W.* to a certain other woman by the name of *K. F.* without any publication of the banns of matrimony between the said *J. W.* and *K. F.* according to law, and without any licence first had and obtained for the marriage aforesaid last mentioned from any proper ordinary whatever, against the form of the statute aforesaid in such case thereof lately made and provided: whereby an action accrued to the said now lord the king and to the said *John*, who as well, &c. to demand and have of the said *Henry* other 100*l.* other parcel of the said 400*l.* And the said *J. Bradshawe*, who as well, &c. farther says, that within one year next before the day of obtaining the original writ aforesaid, to wit, on the 21st day of *February* in the third year aforesaid, at *London* aforesaid in the parish and ward aforesaid, the said *Henry* being a person in holy orders did marry a certain other man, by the name of *A. L.* to a certain other woman by the name of *E. S.* without any publication of the banns of matrimony between the said *A. L.* and *E. S.* according to law, and without any licence first had and obtained for the marriage aforesaid last mentioned from any proper ordinary whatever, against the form of the statute aforesaid in such case thereof lately made and provided; whereby an action accrued to the said now lord the king and to the said *John*, who as well, &c. to demand and have of the said *Henry* 100*l.* residue of the said 400*l.* Nevertheless the said *Henry*, altho' often required, &c. the said 400*l.* or any penny thereof, to the said now lord the king and to the said *J. Bradshawe*, who as well, &c. or to either of them, hath not yet render'd, but the same to the said now lord the king, or to the said *John*, who as well, &c. hitherto to render hath altogether denied, and yet doth deny, to the damage of the said *J. Bradshawe*, who as well, &c. 10*l.* And therefore as well for the said now lord the king as for himself he produces the suit &c.

And the said *Henry* by *J. B.* his attorney comes and defends the force and injury when, &c. and says, that he the same *Henry* doth not owe to the said lord the king and the said *J. Bradshawe*, who as well, &c. the said 400*l.* or any penny thereof, in manner and form as the said *John*, who as well, &c. above thereof against him has declared: And of this he puts himself upon the country: And the said *John*, who as well, &c. likewise: Therefore the sheriffs are commanded that they cause to come here in the morrow of the Ascension of the Lord 12, &c. by whom, &c. and who neither, &c. to recognise, &c. because

Plea, Not indebted.

Venire awarded.

13 E. 1. c. 30.

12 E. 2. c. 4.

14 E. 3. c. 16.

The postea.

Tales.

35 H. 8. c. 6.

[224]
Verdict for the
plaintiff for
300 l.

For the defen-
dant for the rest.

Judgment.

Moiety to the
kings.

Moiety to the
informers.

because as well, &c. At which day the jury between the parties aforesaid in the plea aforesaid was respited between them until this day, to wit, in the morrow of the Holy *Trinity* then next following, unless *P. King*, knt. chief justice of the court of the lord the king of the bench, here assigned by form of the statute, &c. on *Wednesday* the fifth day of *June* last past at *Guildhall, London*, should first come: And now here at this day comes the said *John*, who as well, &c. by his attorney aforesaid: And the said chief justice before, &c. hath sent here his record in these words: Afterwards at the day and place within mentioned before *P. King*, kt. the chief justice within written, *Joseph Houlston*, gent. being associated to him by the form of the statute, &c. comes as well the said *J. Bradshawe*, who as well for the lord the now king as for himself in this behalf prosecutes, as the within written *Henry Gower* by their attorney within contained; and the jurors of the jury, whereof mention is within made, being called, some of them, to wit, *J. E. D. W.* and *S. S.* come, and on that jury are sworn; And because the rest of the jurors of the same jury do not appear, therefore others from the by-standers by the sheriffs of *London* hereto chosen at the request of the said *J. Bradshawe*, who as well, &c. and by the command of the chief justice aforesaid are added anew, whose names are filed in the panel within written, according to the form of the statute in such case made and provided; which said jurors so added anew, to wit, *R. B. J. S. &c.* being likewise called come, who to say the truth of the within contained, together with the other jurors aforesaid first impanelled, being elected, tried and sworn, say upon their oath, that the said *Henry Gower* owes to the said lord the king and to the said *John*, who as well, &c. 300 l. parcel of the debt of 400 l. within written, in manner and form as the said *John*, who as well, &c. hath within declared against him; and they assess the damages of the said *John* by reason of the detention of the said debt of 300 l. parcel of the debt of 400 l. within written, beside his costs and charges by him about his suit in this behalf expended, to 2 d. and for those costs and charges to 53 s. 4 d. And the jurors aforesaid farther say on their oath, as to the third declaration within written, that the said *Henry Gower* doth not owe to the said lord the king and the said *John Bradshawe*, who as well, &c. the within written 100 l. residue of the said 400 l. in manner and form as the said *John Bradshawe*, who as well, &c. hath within him against declared: Therefore it is considered, that the said now lord the king and the said *John*, who as well, &c. recover against the said *Henry Gower* the said debt of 300 l. which by the jury aforesaid is found the said *Henry Gower* by force of the statute aforesaid hath forfeited and owes to the said now lord the king and the said *John Bradshawe* whereof the said now lord the king may have 150 l. for his moiety, and the said *John Bradshawe*, who as well, &c. may have the other 150 l. for his moiety, according to the form of the

the statute aforesaid: It is also considered, that the said *John Bradshawe*, who as well, &c. recover against the said *Henry Gower* his damages aforesaid to 53 s. 6 s. by the jurors aforesaid in form aforesaid assessed, as also 17 l. 6 s. 6 d. to the same *John Bradshawe*, who as well, &c. at his request for his costs and charges aforesaid by the court here of increase adjudged, which said damages amount in the whole to 20 l. And the said *Henry Gower* in mercy, &c. And likewise the said *John Bradshawe*, who as well, &c. in mercy for his false suit against the said *Henry Gower* for the residue of the debt aforesaid, whereof the said *Henry Gower* by the jurors aforesaid is above acquitted: And the said *Henry Gower* may go thence without day, &c.

Judgment for the informer for costs.

Orchard and Shepheard.

Afterwards, to wit, on *Tuesday* next after three weeks of *Easter* in this same term, before the lord the king at *Westminster* comes the said *G. Orchard* by *J. L.* his attorney, and prays that the said *Samuel Shepheard* may assign errors in the record and proceedings aforesaid on record; whereupon day is given by the court of the said lord the king now here until next after to assigns errors in the record and proceedings aforesaid: On which day before the lord the king at *Westminster* comes the said *George* by his attorney aforesaid, and the said *Samuel* doth not come nor assign any error or record in the record and proceedings aforesaid, nor farther prosecute his writ of error aforesaid, but makes default: Therefore it is considered, that the said *Samuel* take nothing by his writ aforesaid, and that the said *George* may go thence without day: It is also considered, that the said *George* recover against the said *Samuel* 9 l. to the same *George* by the court of the said lord the king now here against the said *Samuel* adjudged, according to the form of the statute in such case lately made and provided, because the said *Samuel* doth not prosecute his writ of error aforesaid: And the said *George* may have thereof execution, &c.

Non pros for not assigning error.

3 H. 7. c. 20

Ousnam and Mittell.

Afterwards, to wit, on *Monday* next after the octave of the purification of the blessed virgin *Mary* in this same term, before the lady the queen at *Westminster* comes the said *Samuel Mittell* in his proper person, and the said *John Ousnam* in his proper person likewise comes, and freely here in court thereupon the same *John Ousnam* says, that the said writ of error by the said *Samuel Mittell* in form aforesaid prosecuted did wrongfully and improvidently issue; because by the writ aforesaid it appears that the same writ of error was prosecuted by the same *Samuel* as bail for the said *George Gibson* in the plea aforesaid, as well on the rendition

Writ of error quashed because brought as well on the rendition of the judgment against the principal as on the award of execution against the bail.

rendition of the judgment on the plea aforesaid between the same *John* and the said *Richard*, as on the adjudication of execution on the writ of *Scire Facias* issuing out of the king's court of the town and parish of *Maidstone* against the said *Samuel Mittell* as bail for the said *Richard* in the same plea, when by the law of the land of this kingdom of *England* no such writ of error in the name and at the suit of the said *Samuel* ought to have issued, and for that reason the same *John Ousnam* prays, that the writ of error by the said *Samuel* in form aforesaid prosecuted may be quashed, vacated and held for void: Whereupon all and singular the premisses being seen, and by the court of the said lady the queen now here more fully understood, and mature deliberation being thereon had, it is considered, that the said writ of error by the said *Samuel Mittell*, in form aforesaid prosecuted be quashed, vacated and held intirely for void, &c.

[225]

Burr and Atwood.

General errors assigned on a judgment against the bail in a *Scire facias*.

Afterwards, to wit, on *Tuesday* next after three weeks of *Easter* in that same term, before the lord the king at *Westminster* comes the said *James Burr* by *J. L.* his attorney and says, that in the record and proceedings aforesaid, as also in the adjudication of execution aforesaid, there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment of adjudication of execution on the writ of *Scire facias* aforesaid given was given for the said *John Atwood* against the said *James Burr*, when by the law of the land of this kingdom of *England* that judgment ought to have been given for the said *James Burr* against the said *John Atwood*; and therefore in that it is manifestly erroneous: And he prays, that the said judgment, for that error and others in the record and proceedings aforesaid being, may be revoked, annulled and held intirely void; and that the said *James* may be restored to all things which he hath lost by reason of the judgment aforesaid; and that the said *John Atwood* to those errors may rejoin, &c.

Cootte and Lynch.

Errors assigned on a judgment in debt affirmed in *Ireland* and in *K. B.* here.

Afterwards, to wit, on the 4th day of *March* in the 9th year of the reign of the lord *William* the third, now king of *England*, comes the said *Richard Cootte* by *J. B.* his attorney, and says, that in the record and proceedings aforesaid, as also in the rendition of the judgment and in the several affirmations of the judgment aforesaid in the record aforesaid mentioned, there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid by the said court of the said lord the king before the said lord the king at the king's court in the kingdom of *Ireland*, and also by the said court of the lord the king before the king himself in *England*, is in all things affirmed, when

when no such affirmation of the judgment aforesaid ought thereon to have been given; and therefore in that there is manifest error: And he prays, that the judgment aforesaid, for the said error and others in the record and proceedings aforesaid being, may be revoked, annulled and held intirely void, and that he may be restored to all things which he hath lost by reason of the judgment aforesaid: And that the said *John Lynch* to the errors aforesaid may rejoin, &c.

Probert and Edmonds.

AND the said *John* by *J. M.* his attorney comes and says, that the declaration aforesaid, and the matter in the same contained, are not sufficient in law to maintain the action of the said *Henry* against the same *John* had; and therefore in that there is manifest error: There is error also in this, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said *Henry* against the said *John*, when by the law of this kingdom of *England* that judgment ought to have been given for the said *John* against the said *Henry*; and therefore in that it is manifestly erroneous: It is erroneous also in this, to wit, that the said *Henry* before the verdict aforesaid given, to wit, on the 3d day of *August* in the year of the Lord 1693, at *Bergavenny* in the county of *Monmouth*, died, and so the judgment thereon is erroneous: And he prays, that the judgment aforesaid, for those errors and others in the record and proceedings aforesaid being, may be reversed, annulled and held intirely void, and that the same *John* may be restored to all things which he hath lost by reason of the judgment aforesaid.

Errors assigned, the declaration insufficient and death of the plaintiff before verdict.
Salk. 491.

And the said *Henry* by *A. B.* his attorney comes and says, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid: And he prays, that the court of the said lord the king now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matter aforesaid above assigned for error, and that the judgment aforesaid may be in all things affirmed: But because the court of the said lord the king here are not advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king in the octave of the purification of the blessed virgin *Mary* wheresoever, &c. to hear their judgment of and upon the premisses, because the court of the lord the king here thereof not yet, &c.

No error.

Lewes and Jones.

[226]

ON which day before the lady the queen at *Westminster* come the parties aforesaid by their attornies aforesaid: And because it is suggested to the court here, that the transcript of the record and proceedings aforesaid in form aforesaid sent to the said lady the queen,

Diminution alleged in a record of a judgment given in the grand sessions of *Wales*.

queen, and now before the same lady the queen remaining, is falsely certified, to wit, in the last *placita* in the record and proceedings aforesaid certified, between the words [at the grand sessions] and the words [county aforesaid] the words [of the lord the king] are falsely certified; whereas in the record and proceedings before the said justices of the said lady the queen of her grand sessions of her county of *Carmarthen* remaining, between the said words [at the grand sessions] and the words [county aforesaid] are these words [of the lady the queen]: And also in the declaration in the record and proceedings aforesaid certified, between the word [unto] and the words [queen's highway] this word [said] is wholly omitted, and not certified, but that word is in the declaration in the record of the judgment aforesaid before the said justices of the said lady the queen of her grand sessions of her county of *Carmarthen* aforesaid remaining: And because it seems necessary and expedient to the court of the said lady the queen now here, before the court of the said lady the queen now here can proceed farther in this behalf, that the said lady the queen now here for her information in this behalf should be certified of and upon the premises, the court here command the justices of the grand sessions of the county of *Carmarthen*, that searching the rolls, entries, records and proceedings aforesaid, in the said plea which was before the said justices of the said lord *William* the third, the late king, between the said *Bridget Jones*, widow, and the said *George Lewes* of the borough of *Carmarthen* in the county of the same borough, esq; in the said plea of trespass on the said *Bridget* by the said *George* committed, they forthwith certify what false certificates and omissions they shall find to the said lady the queen, together with the writ to them for that purpose directed: Whereupon *Philip Neve*, serjeant at law, and *Thomas Webb*, esq; justices of the said lady the queen of her grand sessions of her county of *Carmarthen* aforesaid, have returned and certified to the said lady the queen, that by virtue of the writ to them directed they had inspected the record and proceedings between the parties aforesaid in the plea aforesaid in the grand sessions of the said lady the queen, held at *Carmarthen* aforesaid in the county aforesaid, being there of record, and had found, that in the last *placita* in the said record and proceedings between the words [at the grand sessions] and the words [county aforesaid] these words [of the lord the king] were falsely certified; because by the record aforesaid it appears, that between the words at [the grand sessions] and the words [county aforesaid] are these words [of the lady the queen]: And also in the declaration in the record and proceedings aforesaid, between the word [unto] and the words [the queen's highway] this word [said] was omitted to be certified; because by the declaration aforesaid in the record and proceedings aforesaid it appears, that between the word [unto] and the words [the queen's highway] this word [said] is inserted.

*Almerick de Coursey, Earl of Kingsale, against
Compton, knt.*

Afterwards, to wit, on *Wednesday* next after a month of *Easter* in the 5th year of the reign of the said now lady the queen, before the same lady the queen at *Westminster* comes the said *Almerick de Coursey* by *James Close* his attorney and says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that the declaration aforesaid, and the matter in the same contained, are not sufficient in law to maintain the action of the said *Francis Compton*, knt. thereof against him the said *Almerick* had; therefore in that there is manifest error: There is error also in this, to wit, that by the record aforesaid it appears, that the judgment in form aforesaid given was given for the said *Francis Compton*, knt. against the said *Almerick*, when by the law of the land of this kingdom of *England* the said judgment ought to have been given for the said *Almerick* against him the said *Francis Compton*, knt, therefore in that it is manifestly likewise erroneous: There is error also in this, to wit, that by the record aforesaid it appears, that the issue aforesaid between the parties aforesaid in the plea aforesaid joined was joined in *Trinity* term in the 4th year of the reign of the now lady the queen: Nevertheless the writ of *venire facias* between the parties aforesaid, in the plea aforesaid to try that issue, bore *teste* and issued long before the said issue was joined, to wit, on the 15th day of *May* in the 4th year of the reign of the now lady the queen, and also was returnable and returned before the issue aforesaid was joined, to wit, on the morrow of the Holy *Trinity* then next following, as by the writ of *venire facias* aforesaid in the custody of the *Custos Brevium* of the court aforesaid of record remaining filed more fully appears; therefore in that it is likewise manifestly erroneous: And the said *Almerick* farther says, that the record aforesaid to the lady the queen transmitted is diminished in not certifying here the said writ of *Venire facias*; whereupon the same *Almerick* prays the writ of the lady the queen of *Certiorari* to be directed to the *Custos brevium* of the said lady the queen of the bench, to certify here the writ aforesaid; and it is granted him, &c.

Error assigned,
that the declara-
tion is insuffi-
cient.

That the *teste* of
the *venire* was
before issue join-
ed.

Cro. Car. 38, 90.

32 H. 8. c. 30.
2 Lev. 22.
1 Lev. 69.
Lutw. 1638.

[227]

Ro. Raymond.

*In this case an imparlance roll was entred and certified, where-
upon judgment was affirmed in K. B.*

Twitney

Twitney and Houlder.

Certiorari to the chief justice, want of warrants of attorney being assigned for error, who return'd there were none.

Wherefore *Thomas Trevor*, knt. chief justice of the common bench is commanded, that searching the rolls and other memorandums of the warrants of attorney of the county of *Worcester* of *Easter* term in the 13th year of the reign of *William* the third, late king of *England*, &c. being in his custody of record, he forthwith certifies to the said lady the queen wheresoever, &c. what he shall thereof find in the same, together with the writ of the said lady the queen to him for that purpose directed: Which said *Thomas Trevor*, knt. chief justice aforesaid, by virtue of the writ aforesaid to him for that purpose directed, hath certified to the said lady the queen at *Westminster*, that having searched the rolls and other memorandums of the warrants of attorney of the county of *Worcester* of *Easter* term in the 13th year of the reign of *William* the third, late king of *England*, &c. in his custody entred of record, there is no warrant of attorney between the parties aforesaid in the plea aforesaid; which said writ, together with the return thereof, is filed before the said lady the queen at *Westminster* among the records without day of this term: And he prays that the judgment aforesaid, for that error and others being in the record and proceedings aforesaid, may be revoked, annulled and held as void; and that the same *Thomas* may be restored to all things which he hath lost by reason of the judgment aforesaid; and that the said *Richard Houlder* to the errors aforesaid may rejoin, &c.

Cutting and Williams.

The reversal of a judgment for error.

ON which day before the lady the queen at *Westminster* come the parties aforesaid by their attornies aforesaid; whereupon all and singular the premisses being seen, and by the court of the said lady the queen now here more fully understood, and mature deliberation being thereon had; because it seems to the court of the said lady the queen now here, that there is manifest error in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, it is considered, that the judgment aforesaid, for those errors and others in the record and proceedings aforesaid, be revoked, annulled and held intirely as void: And that the said *John Williams* be restored to all things which he has lost by reason of the judgment aforesaid, &c.

Alexander

Alexander and Woods and others.

Pleas before the lady the queen at Westminster of Trinity term in the ninth year of the reign of the lady Anne, now queen of Great Britain, &c. Roll 54.

England, to wit. **T**HE lady the queen sent to her trusty and well beloved *Thomas Trevor*, knt. her chief justice of the bench, her writ close in these words, to wit, *Anne* by the grace of God of *Great Britain, France and Ireland* queen, defender of the faith, &c. To her trusty and well beloved *Thomas Trevor*, knt. her chief justice of the bench, greeting: Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in our court before you and your companions, our justices of the bench, by our writ between *John Alexander* and *John Woods*, late of *London*, merchants, *John Osgood*, late of *London*, merchant, and *Nathaniel Rouse*, late of *London*, merchant, of a certain trespass on the case to the same *John Alexander*, &c. [to the end of the transcript] And the said *John Woods*, *John Osgood* and *Nathaniel* in mercy, &c.

The manner of making up a record of *Nisi prius* on issue joined in error.

Afterwards, to wit, on *Wednesday* next after 15 days of *Easter* in that same term, before the lady the queen at *Westminster* come the said *John Osgood* and *N. Rouse* in their proper persons, and say, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid is given as well against the said *John Woods* as the said *John Osgood* and *Nathaniel Rouse*, when in truth the said *John Woods* in the plea aforesaid mentioned, before the trial of the issue in the record aforesaid between the parties aforesaid joined, and before the rendition of the judgment aforesaid, to wit, on the 20th of *July* in the 8th year of the reign of the said now lady the queen at *Horsham* aforesaid in the county of *Sussex* aforesaid, died, and so the judgment aforesaid is erroneous and void in law: And the said *J. Osgood* and *Nathaniel* pray, that the judgment aforesaid, for the error aforesaid and others being in the record and proceedings aforesaid, may be revoked, annulled and held intirely as void; and that they the said *John Osgood* and *Nathaniel Rouse* may be restored to all things which they have lost by reason of the judgment aforesaid: And they pray a writ of the lady the queen to warn the said *John Alexander* to be before the lady the queen to hear the record and proceedings aforesaid; and it is granted them; whereby the sheriff of the county of *Sussex* is commanded that by good, &c. he cause the said *John Alexander* to know that he be before the lady the queen on the morrow of the Holy *Trinity* wheresoever, &c. to hear the record and proceedings aforesaid, if, &c. and farther, &c. The same day

[228]

Death of one of the plaintiffs in error before trial assigned for error.

9 Rep. 30. b. Note; *Trin.* 7 Geo. these errors on affidavit the party was alive were set aside.

Scire facias prayed.

The defendant
appears and
pleads that *J.*
W. is living, and
traverses his
death before the
trial of the issue.

Repl. and issue
on the traverse.

Venire awarded
of the body of
the county.

The *Distringa*
for the assises.

13 E. 1. c. 30.
12 E. 2. c. 4.
14 E. 3. c. 16.

day is given to the said *John Osgood* and *Nathaniel Rouse*, &c. On which day before the lady the queen at *Westminster* come the said *John Osgood* and *Nathaniel* in their proper persons, and the sheriff hath not returned thereof the writ: And the said *John Alexander*, on the fourth day of pleas being solemnly called by *John Allen* his attorney, likewise comes and says, that by any thing before alledged the judgment aforesaid ought not to be reversed, because he says, that the said *John Woods* in the plea aforesaid mentioned is yet surviving and living, without that, that the same *John Woods* died before the trial of the issue aforesaid in the record aforesaid between the parties aforesaid joined, in manner and form as the said *John Osgood* and *Nathaniel* above have alledged: And this he is ready to verify: Wherefore he prays that the judgment aforesaid may be in all things affirmed, &c.

And the said *John Osgood* and *Nathaniel Rouse* as before say, that the said *John Woods* died before the trial of the issue aforesaid in the record aforesaid between the parties aforesaid joined, in manner and form as the same *John Osgood* and *Nathaniel Rouse* have above alledged: And this they pray may be inquired of by the country: And the said *John Alexander* thereof likewise, &c. Therefore the sheriff of the said county of *Sussex* is commanded that he cause to come before the lady the queen from the day of the Holy *Trinity* in three weeks wheresoever, &c. twelve. &c. of the body of the county, &c. by whom, &c. and who neither, &c. to recognize on their oath, whether the said *John Woods* died before the trial of the issue aforesaid in the record aforesaid between the parties aforesaid joined, as the said *John Osgood* and *Nathaniel Rouse* have alledged, or not, because as well, &c. The same day is given to the parties aforesaid, &c. At which term before the lady the queen at *Westminster* come as well the said *John Osgood* and *Nathaniel Rouse* in their proper persons, as the said *John Alexander* by his attorney aforesaid; and the sheriff of the county of *Sussex*, to wit, *William Kent*, esq; returns the said writ of *Venire facias* to him in form aforesaid directed in all things served and executed, together with a panel of the names of the jurors, of whom none, &c. Therefore the sheriff is commanded that he distrain the jurors aforesaid by all their lands, &c. so that he may have their bodies before the lady the queen from the day of St. *Michael* in three weeks wheresoever, &c. or before the justices of the said lady the queen, assigned to take assises in the county aforesaid, if they shall before come on *Monday* 17th day of *July* at *Eastgrimstead* in the county aforesaid, by the form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. The same day is given to the parties aforesaid, &c. And be it known that the writ of the said lady the queen thereof 28th day of *June* in this same term was delivered of record to the under-sheriff of the county aforesaid, directed in form of law, to be executed at his peril, &c.

Jones against Stephens.

Afterwards, to wit, on day next after in this same term, before the lord the king at *Westminster* comes as well the said *R. Stephens* as the said *R. Jones* in their proper persons; whereupon as well the writ of error aforeaid, as the record and proceedings aforeaid, by pretence of the writ of error aforeaid transmitted and certified to the said court of the said lord the king now here being seen, and by the court of the lord the king here more fully understood and examined, because it seems to the court of the said lord the king now here, that *Edward N. knt.* one of the justices of the bench, was by the writ aforeaid commanded that he should certify the record and proceedings of a plea which was before the said *E. N.* and his companions, justices of the bench in the court aforeaid, between the parties aforeaid: Nevertheless the said *E. N.* hath transmitted to the court here the record and proceedings of a certain plea which was before *G. T. knt.* and his companions, justices of the lord the king of the bench aforeaid, and so the writ aforeaid hath not warranted the sending the record and proceedings aforeaid to the said court of the said lord the king now here sent and certified: Therefore it is considered that the writ of error aforeaid be quashed, &c.

The entry of the quashing a writ of error because the writ did not warrant the transcript of the record.

Mathews against Ludlowe.

AND the said *William Mathews* by *J. L.* his attorney comes and says, that the said *Henry Ludlowe* ought not farther to prosecute or maintain his writ of error aforeaid against him the said *William Mathews*, because he says, that after the judgment aforeaid in form aforeaid recovered, and before the day of the obtaining of the writ of error aforeaid, to wit, 17th day of *July* in the 31st year of the reign of the lord *Charles* the second, now king of *England*, &c. he the said *Henry Ludlowe*, by the name of *Henry Ludlowe* of *Bramley* in the county of *Surry*, esq; at *Westminster* in the county of *Middlesex*, by his certain writing of release sealed with the seal of the said *Henry*, and to the court of the said lord the king now here shewn, the date whereof is the same day and year, remised, released and for ever quitted claim to the said *William Mathews*, by the name of *William Mathews*, his executors and administrators, all and all manner of error and errors, writ and writs of error, and erroneous process whatsoever, and all benefits and advantages of the same, and all misprision of error and errors, defects and imperfections whatsoever had, made, committed, omitted, done or permitted, in, about, touching or concerning the said judgment in ejectment aforeaid, obtained against him the said *Henry* by the said *William* in the said *Trinity* term then last past, in the said court of the said lord the king of common bench at *Westminster*, for the said one

A release of errors pleaded.

messuage, 30 acres of land, 10 acres of meadow, and 20 acres of pasture with the appurtenances in *Bramley* and *Shalford* in the said county of *Surry*, demised to the said *William* by the said *M. Stynt*, widow, for 5 years from the first day of *March* then last past, or in, about, touching or concerning any warrant, process, original declaration, plea, entry or other proceedings whatsoever of or any way concerning the same judgment: And this the same *William* is ready to verify: Wherefore he prays judgment if the said *Henry* ought farther to prosecute or maintain his writ of error aforesaid against him the said *William*, &c.

Edm. Saunders.

Else and Cotton.

Repl. Not his
deed.

Venue awarded.

[230]

Disfringas.

Nisi prius at
Westminster.

13 E. 1. c. 30.

12 E. 2. c. 4.

14 E. 3. c. 16.

AND the said *Timothy* says, that he ought not to be precluded from his writ of error aforesaid against him the said *William Else* on the judgment aforesaid had, because he says, that the writing of release aforesaid, by him the said *William* in manner and form aforesaid above pleaded in bar of the errors aforesaid by the said *Timothy Cotton* assigned, is not the deed of him the said *Timothy*: And this he prays may be inquired of by the country: And the said *William* likewise, &c. Therefore the sheriff is commanded that he cause to come before the lord and lady the king and queen from the day of *Easter* in one month wheresoever, &c. twelve free and lawful men of the neighbourhood of *Westminster* aforesaid in the county aforesaid, each of whom hath 20 l. of land, tenements or rent yearly at the least, by whom the truth of the fact may be better known, and who are no way related either to the said *William* or the said *Timothy*, to recognize on their oath, whether the writing of release aforesaid be the deed of the said *Timothy* or not: The same day is given to the parties aforesaid, &c. On which day before the said lord and lady the king and queen at *Westminster* come the parties aforesaid by their attorneys aforesaid, and the sheriff returns the writ aforesaid in all things served and executed, together with a panel of the names of the jurors to the same writ annexed, of whom none, &c. Therefore the sheriff is commanded that he distrain them by all their lands, &c. and that of the issues, &c. so that he may have their bodies before the lord and lady the king and queen on the morrow of the Ascension of the Lord wheresoever, &c. to recognize in form aforesaid, unless the trusty and well beloved of the lord and lady the king and queen *John Holt*, knt. chief justice of the same lord and lady the king and queen, assigned to hold pleas in the court of the same lord and lady the king and queen before the lord and lady the king and queen themselves, shall first come on *Thursday* 20th day of *July* at *Westminster* in the great hall of pleas there, by the form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. The same day is given to the parties aforesaid, &c.

Gawlet

Gawler and Elliott.

AND the said *John Gawler* by *J. A.* his attorney comes and says, that the said *William* ought not farther to prosecute or maintain his writ of error aforesaid against him the said *John*, because he says, that after the judgment in form aforesaid recover'd, to wit, 17th day of *May* in the year of the Lord 1716, he the said *William*, by the name of *William Elliott* of the parish of *St. Paul Covent Garden* in *Middlesex*, woollen draper, at the parish of *St. Clement Danes* in the county of *Middlesex* aforesaid, by his certain writing of release sealed with the seal of him the said *William*, and to the court of the lord the king now here shewn, the date whereof is the same day and year, did remise, release, and for ever quit claim to the said *John*, by the name of *John Gawler*, gent. his heirs, executors and administrators, all and all manner of error and errors, writ and writs of error, and all benefits and advantages of the same, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done or suffered in, about, touching or concerning the said judgment obtained against him the said *William* by the said *John* in the said *Easter* term in the said court of the said lord the king of common bench at *Westminster*, for 355 *l.* debt, beside costs of suit, or in, about, touching or concerning any warrant, process, declaration, plea, entry or other proceeding whatsoever, of or in any manner concerning the same judgment: And this the same *John* is ready to verify: Wherefore he prays judgment if the said *William* ought farther to prosecute his writ of error aforesaid against him the said *John*, &c.

Plea. Release of
error.

C. Wearg.

Sheeres against Pomeroy.

AFTERWARDS, to wit, on *Thursday* next after 15 days of *Easter* in this same term before the lady the queen at *Westminster* comes the said *J. Sheeres* by *J. A.* his attorney and says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that the declaration aforesaid in the record aforesaid mentioned, and upon which the judgment aforesaid in form aforesaid is given, and the matter in the same contained, are not sufficient in law to have or maintain that judgment in form aforesaid thereon given, and so the judgment aforesaid in form aforesaid given is erroneous and void in law; therefore in that there is manifest error: There is error also in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in the plea aforesaid given is given as well for the said *William Pomeroy* as for the said *William Plover*, when in truth the said *William Plover* in the declaration aforesaid mentioned, before the return of the writ of inquiry of damages aforesaid, and before the rendition of

Declaration in-
sufficient.

Death of one of
the plaintiffs be-
fore the return of
the writ of in-
quiry.

Seire facias
prayed.

[231]

Defendant ap-
pears and (pro-
testing there is
no error) de-
murs.

3 H. 7. c. 10.

27 El. c. 5.
4 A. c. 16.

the judgment aforesaid, to wit, 18th day of *November* in the 8th year of the reign of the lady *Anne*, now queen, &c. at *London* aforesaid in the parish and ward aforesaid died, and so the judgment aforesaid is erroneous and void in law: And the said *Jonathan* prays that the judgment aforesaid, for the errors aforesaid and others being in the record and proceedings aforesaid, may be reversed, annulled and intirely held as void; and that he the said *Jonathan* may be restored to all things which he hath lost by reason of the judgment aforesaid: And he prays a writ of the lady the queen, to warn the said *William Pomeroy* to be before the lady the queen to hear the record and proceedings aforesaid, if, &c. and it is granted him, &c. Whereby the sheriffs of *London* are commanded that by good, &c. they give notice to the said *William Pomeroy* to be before the lady the queen on the morrow of the Holy *Trinity* wheresoever, &c. to hear the record and proceedings aforesaid, if, &c. and farther, &c. The same day is given to the said *Jonathan*, &c. On which day before the lady the queen at *Westminster* comes the said *Jonathan* by his attorney aforesaid; and the said *William Pomeroy* being solemnly called, by *Edward Halstead* his attorney likewise comes: Whereupon the said *Jonathan* as before says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is manifest error, alledging the errors aforesaid by him in form aforesaid alledged: And prays, that the judgment aforesaid, for those errors and others being in the record and proceedings aforesaid, may be reversed, annulled and intirely held as void, and that he may be restored to all things which he hath lost by reason of the judgment aforesaid: And that the said *William Pomeroy* to those errors may rejoin, &c. Whereupon the said *William Pomeroy* says, that by any thing by the said *Jonathan* above for error assigned the judgment aforesaid ought not to be reversed or annulled; because by protesting there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, nevertheless for plea the same *William* says, that the matters aforesaid above by the said *Jonathan* in manner and form aforesaid for error assigned are not sufficient in law to reverse or annul the said judgment, or to compel him the said *William Pomeroy* to rejoin to those errors, and that he the said *William Pomeroy* hath no necessity, nor is obliged by the law of the land, in any manner to answer to those errors in manner and form aforesaid assigned: And this he is ready to verify: Wherefore he prays judgment, and that the judgment aforesaid may be in all things affirmed and stand and remain in its full strength, force and effect; and he also prays his damages, costs and charges, by reason of the delay of execution of the judgment aforesaid, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c. And for causes of demurrer in law in this behalf, according to the form of the statute in such case lately made and provided, the same *William Pomeroy* doth set down and to the court here exprefs these causes following,

wit, Because the errors above assigned are various and of different sorts, and contain several and double matters, and include matter of law and in fact together, and also because there is no averment of those errors.

Tho. Pengelly.

And the said *Jonathan* says, that the errors aforesaid by him the said *Jonathan* in manner and form aforesaid above assigned, and the matter in the same contained, are good and sufficient in law to reverse and annul the said judgment, and to compel the said *William Pomeroy* to rejoin to those errors: Which said matter the same *Jonathan* is ready to aver and prove, as the court, &c. And because the said *William* doth not rejoin to those errors, nor hitherto any way deny them, the same *Jonathan* as before prays, that the judgment aforesaid may be reversed, annulled, and held as intirely void, and that he may be restored to all things which he hath lost by reason of the judgment aforesaid: But because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lady the queen until

wheresoever, &c. to hear their judgment of and upon those premisses, because the court of the said lady the now queen thereof not yet, &c.

Reynolds against Seymour.

Afterwards to wit, on *Tuesday* next after the morrow of St. *Martin*, before the lord the king at *Westminster* came the said *Elizabeth Reynolds* by *W. B.* her guardian, by the court of the said lord the king hereto specially admitted, and produced here into the court of the said lord the king then there a certain writ of the said lord the king of error prosecuted of and upon the premisses, and prayed that the writ aforesaid might be allowed; and it is allowed, &c. Which said writ follows in these words, to wit, *William* the third, &c. To our justices assigned to hold pleas before us greeting: Because in the record and proceedings of a certain plea which was in our court and of the lady *Mary* late queen of *England* before us and the said late queen, by bill between *William Seymour* and *Elizabeth Reynolds*, of a certain trespass on the case to the same *William* by the said *Elizabeth* committed, and in the rendition of the judgment of the same plea in our court before us, as it is said, (which said record and proceedings before us now remain, as it is said,) a manifest error has happened, to the great damage of the said *Elizabeth*, as by her complaint we have understood: We willing the error (if any hath been) should be duly corrected, and full and speedy justice done to the parties in this behalf, command you, that inspecting the record and proceedings aforesaid you farther cause to be done therein to correct that error what of right, and according to the law and custom of our kingdom of *England*, shall be to be done.

A writ of error
coram nobis res-
den.

[232]
 Infancy assigned
 in the defendant
 in the action.
 9 Rep. 30. b.
 Buit. 130.

Witness ourself at *Westminster* 9th day of *November* in the 7th year of our reign.

And upon this the same *Elizabeth* says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that she the said *Elizabeth* appeared in the suit aforesaid by her attorney; nevertheless the said *Elizabeth* at the time of the appearance, and of the rendition of the judgment aforesaid, was under the age of 21 years, to wit, of the age of 17 years and no more, to wit, at the parish of *St. Mary-le-Bow* in the ward of *Cheape, London*, aforesaid, in which case the same *Elizabeth* ought to be admitted to appear in the court aforesaid, to defend the suit aforesaid by her guardian and not by her attorney; therefore in that there is manifest error: And this she is ready to verify: Wherefore the same *Elizabeth* prays, that the judgment aforesaid for the error aforesaid may be reversed, annulled and held as intirely void, and that she may be restored to all things which she has lost by reason of the judgment aforesaid, &c.

Beauchamp and Durdant.

Repl. Of full
 age.

AND the said *Philip Beauchamp* by *J. L.* his attorney comes and says, that the said *William Durdant* ought not to have or maintain his writ of error aforesaid against him the said *Philip*, because he says, that he the said *William* in the said *Michaelmas* term in the 8th year aforesaid, and at the time of the rendition of the judgment aforesaid, was of the full age of 21 years and more, to wit, at *C.* aforesaid in the county aforesaid: And of this he puts himself on the country: And the said *William* thereof likewise, &c. Therefore, &c.

Fox against King and another.

The entry of a
 second writ of
 error *coram nobis*,
 the former being
 abated by the
 death of the
 plaintiff.

BUT because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lady the queen until from the day of *Easter* in 15 days wheresoever, &c. to hear their judgment thereon, because the court of the said lady the queen here thereof not yet, &c. On which day before the lady the queen at *Westminster* come the said *Thomas* and *William* in their proper persons and say, that after the last continuance of the said writ of error, to wit, after the said octave of *St. Hillary* and before this day, to wit, the said 15th day from *Easter*, to wit, the 1st day of *April* last past, the said *Henry Fox* at *Woolley* aforesaid in the county of *Huntingdon* aforesaid died intestate, after whose death administration of all and singular the goods and chattels, rights and credits, which belonged to the said *Henry Fox* the elder at the time of his death, to one *Henry Fox* the younger in due form of law was committed: And this they are ready to verify: Wherefore they pray judgment of the writ of

error

error aforesaid, and that the said writ may be quashed, vacated and held as void, &c. Wherefore it is considered by the court of the lady the queen here, that the said writ of error be quashed, vacated and held as void: And hereupon afterwards, to wit, on *Wednesday* next after one month of *Easter*, comes here into court the said *Henry Fox* the younger in his proper person, and prays leave to purchase another writ of the said lady the queen of error upon the record and proceedings aforesaid in the court of the said lady the queen before the queen herself remaining; and it is granted him, &c. Whereupon the said *Henry Fox* the administrator afterwards, to wit, on the 30th day of *April* in the 5th year of the reign of the said now lady the queen at *Westminster*, comes into the same court of the said lady the queen in his proper person, and produdes here in the court of the said lady the queen a certain other writ of the said lady the queen, directed to the justices of the same lady the queen assigned to hold pleas before the said lady the queen; which said writ follows in these words, to wit, *Anne*, &c. To our justices assigned to hold pleas before us: Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in our court before *Thomas Trevor*, knt. and his companions, our justices of the bench, by our writ between *Henry Fox* the elder and *Thomas King* late of, &c. *William Bluntsham* late of, &c. of a certain trespass on the same *Henry Fox* by the said *Thomas* and *William* committed, as it is said, (which said record and proceedings by reason of error happening we have caused to be brought before us, and they now before us remain, and the said *Henry Fox* is dead, as it is said,) a manifest error hath happened, to the great damage of *Henry Fox* the administrator of the goods and chattels which belonged to the said *Henry Fox* the elder, who died intestate, as it is said, as by his complaint we have understood: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that inspecting the record and proceedings aforesaid you farther cause to be done therein to correct that error what of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness ourself at *Westminster* 30th day of *April* in the 5th year of our reign. And the said *Henry Fox* prays, that the judgment aforesaid for the errors above assigned may be reversed, annulled and intirely held as void; and that the court of the said lady the queen now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid above as aforesaid assigned for error; but because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premisses, day is given to the parties aforesaid in the said writ of error last mentioned before the lady the queen until on the morrow of the Holy *Trinity* wheresoever, &c. to hear their judgment thereof, because the court of the said lady the queen here thereof not yet, &c.

A new writ of error prayed.

The writ set forth in *læc verba*.

Prays the judgment to be reversed.

[233]

Lloyd against Badger.

Error assigned in
parliament.

Afterwards, to wit, on the 26th day of *March* in the 13th year of the reign of the Lord *William* the Third, before the said lord the king and the Peers and Nobles assembled in this present Parliament of *England* at *Westminster* in the county of *Middlesex* comes the said *T. Lloyd* by *J. L.* his attorney, and says, that in the record and proceedings aforesaid, as also in the rendition and affirmance of the judgment aforesaid in the record aforesaid mentioned, there is manifest error; in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in the court of the said lord the king before the king himself at *Westminster* given, was given for the said *John Badger* against the said *Thomas Lloyd*, when by the law of the land of this kingdom of *England* that judgment ought to have been given for the said *Thomas Lloyd* against the said *John Badger*; and therefore in that there is manifest error: There is error also in the affirmance of the judgment aforesaid, because he says, that the judgment aforesaid was affirmed in the court of the lord the king of the exchequer chamber at *Westminster* before the justices of the common bench and the barons of the exchequer aforesaid, when no such affirmance of the judgment aforesaid ought to have been given thereon, but that judgment by the law of the land of this kingdom of *England* ought to have been reversed; and therefore in that there is manifest error: And he prays that the judgment aforesaid, for those errors and others being in the record and proceedings aforesaid, may be reversed, annulled and held as intirely void; and that he may be restored to all things which he hath lost by reason of the judgment and affirmance aforesaid; and that the said *J. B.* to the errors aforesaid may rejoin, &c.

B. Shower.

Earl of Kildare against Shaen, knt.

General error
assigned on a
judgment on a
Scire facias in
Ireland.

Afterwards, to wit, on *Thursday* next after a month of *St. Michael* in the same term before the lord the king at *Westminster* comes the said *Wentworth Fitz-gerald*, earl of *Kildare*, by *J. L.* his attorney, and says, that in the record and proceedings, as also in the adjudication of the execution aforesaid in the said court of the said now lord the king, called the King's court in his kingdom of *Ireland*, there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment of adjudication of execution on the writ of *Scire facias* aforesaid given, was given for the said *Arthur Shaen* against the said *Wentworth Fitz-gerald*, earl of *Kildare*, when by the law of the land of the said kingdom of *Ireland* that judgment ought to have been given for the said *Wentworth Fitz-gerald*, earl of *Kildare*, against the said *Arthur Shaen*; and therefore in that it is manifestly erroneous: And he prays that the said judgment, for that error and

others

others being in the record and proceedings aforesaid, may be reversed, annulled and held as intirely void; and that the said *Arthur Shaen* may rejoin to the error aforesaid, &c.

St. John Brodrick,

Green and another against Waller.

Afterwards, to wit, day next after in this same term, before the lord the king at *Westminster* comes the said *N. Green* and *W. C.* by *L. H.* their attorney, and say, that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, as also in the affirmance of the same, there is manifest error, in this, to wit, that by the record of the judgment aforesaid and of the affirmance of the same, it appears that the judgment aforesaid in form aforesaid given and affirmed was given and affirmed for the said *James Waller* against the said *Nicholas* and *William*, when by the law of the land of the said kingdom of *Ireland* that judgment ought to have been given for the said *Nicholas* and *William* against the said *James*; therefore in that it is manifestly erroneous: And this the same *Nicholas* and *William* are ready to verify: Wherefore they pray that the judgment aforesaid, and the affirmance of the same, for that error and others being in the record and proceedings aforesaid, may be reversed, annulled and held as intirely void; and that the same *Nicholas* and *William* may be restored to all things which they have lost by reason of the judgment and affirmance aforesaid, &c. and that the said *James* to those errors may rejoin, &c.

Error assigned on a judgment, and the affirmance thereof in *Ireland*.

[234]

Whereupon day is given by the court of the said lord the king now here to the said *James* until from the day of *Easter* in 15 days then next following to rejoin to the said errors: The same day is given to the said *Nicholas* and *William* there, &c. And because before the said 15 days from *Easter* the said lord the late king *William* the third departed this life, and before the same day the plea aforesaid was adjourned by writ of the lady *Anne*, now queen of *England*, &c. of common adjournment before the same lady the queen at *Westminster* until to and upon this day, to wit, from the day of *Easter* in three weeks, and also before the said three weeks from the day of *Easter*, unto which day the plea aforesaid was adjourned, to wit, on the 9th day of *August* 1700, the said *James Waller* at *Westminster* aforesaid made his last will and testament in writing, and by the same constituted *Dorothy* his wife his sole executrix thereof; and afterwards, to wit, on the 13th day of *April* 1702, he the said *James Waller* at *Westminster* in the county of *Middlesex* aforesaid died, and the said *Dorothy* his executrix took upon herself the burden of the execution of the will aforesaid, and that will in due form of law proved, to wit, at *Westminster* aforesaid in the county aforesaid: And this the said *Nicholas* and *William* do not deny: Whereupon at the said 15 days from *Easter* before the said lady the queen at *Westminster* come as well as the said *William* and *Nicholas* by their attorney aforesaid,

Day is given to join in error.

Death of the king.

Adjournment of the term.

The plaintiff in error died, and his executrix appeared and joined in error.

aforesaid, as the said *Dorothy* by *F. B.* her attorney, and says, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid; and prays that the court of the said lady the queen now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matter aforesaid above assigned for error; and because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid by the court of the said lady the queen here until wheresoever, &c. to hear the judgment thereon, because the court of the lady the now queen thereof not yet, &c.

Howell against Harry and his wife.

Error assigned on
a judgment in
assault.
That the original and *Capias*
issued before the
cause of action
accrued.

Afterwards, to wit, on *Saturday* next after 15 days of *St. Hillary* in that same term, before the lord the king at *Westminster* comes the said *Howell John Howell* by *C. C.* his attorney, and says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is manifest error, because the said *Kinwyn* and *Elizabeth* his wife on the 4th day of *October* in the 9th year of the reign of the said lord the now king sued out their original writ out of the court of chancery of the said lord the king, in the plea aforesaid against the said *Howell*, directed to the then sheriff of *Monmouth*, which said writ was returnable before the justices of the said lord the king of the bench at *Westminster* from the day of *St. Michael* in three weeks then next following; and that the said *Kinwyn* and *Elizabeth* afterwards, to wit, on the 23d day of *October* in the 9th year of the reign of the said lord the now king, prosecuted out of the court of the said lord the king of the bench a certain writ of the said lord the king of *capias ad respondendum* on the original writ aforesaid against the said *Howell*, to the sheriff of the county of *Monmouth* aforesaid directed, which said writ was returnable before the justices of the said lord the king of the bench at *Westminster* from the day of *St. Martin* in 15 days; upon which said writ of *capias ad respondendum* the said *Howell John Howell* was taken and appeared in the plea aforesaid; and because it appears by the record aforesaid, that the assault, battery, and all the trespass aforesaid was committed by the said *Howell* on the first day of *December* in the 9th year of the reign of the said lord the now king after the issuing of the original writ aforesaid, and of the said writ of *capias ad respondendum*; therefore the judgment aforesaid is erroneous and void in law; which said writs remain filed in the custody of the *custos brevium* of the said lord the king of the bench of *Michaelmas* term in the 9th year above said; and the said *Howell* prays a writ of the said lord the king of *certiorari* to be directed to the said *custos brevium*, to certify as well the said original writ as the said writ of *capias ad respondendum*, and the several returns of the same writs; and it is granted him, &c. Wherefore by writ of the said lord the king
now

Certiorari to the
Custos brevium.

now here, *W. Thursby*, esq; *custos brevium* of the said lord the king of the bench is commanded, that searching the original writs and the writs of *capias ad respondendum* of the county of *Monmouth* of *Michaelmas* term in the 9th year of the reign of the said lord the king, being in his custody of record, and what of the same writs he shall find, together with the returns of the same, as fully and intirely as they remain before him, to the said lord the king without delay, wheresoever he shall then be in *England*, he certify, together with the writ to him therefore directed; which said *William Thursby* the *custos brevium* aforesaid hath thereon returned and certified to the said lord the king, that the writs original and writs of *capias ad respondendum* of the said lord the king of his county of *Monmouth* of *Michaelmas* term in the 9th year of his reign aforesaid, being in his custody of record, being searched, there is a certain writ original and a writ of *capias ad respondendum* in the plea aforesaid between the parties aforesaid in his custody filed of the same term, the tenor of which said writs together with the returns of the same, as fully and intirely as they remain in his custody filed of record, he hath certified to the said lord the king, as appears in a certain schedule to the same writ annexed, as by the writ aforesaid he was commanded; which said writ follows in these words, to wit, *William, &c.* (*So recite the original to*) And have there the names of the pledges, and this to wit, Witness *Thomas* archbishop of *Canterbury* and the rest of the justices and keepers of the kingdom at *Westminster* 4th day of *October* in the 9th year of our reign,

[235]

The return of
the *custos bre-*
vium.The tenor of the
original,*Killingham,*

Pledges to prosecute *John Doe* and *Richard Roe*; the within named *Howell John* hath nothing in my bailiwick whereby he can be attached.

The sheriff's re-
turn.*Theophilus Reynolds*, esq; sheriff.

William &c. (*reciting the capias to*) Witness *G. Treby* at *Westminster* 24th day of *October* in the 9th year of our reign.

The *capias*.

By virtue of this writ to me directed I have taken the body of the within named *Howel John Howell*, whose said body I have ready at the day and place within contained.

The sheriff's re-
turn.*Theophilus Reynolds* esq; sheriff.

And the said *Howell* prays, that the judgment aforesaid, for the error aforesaid and others being in the record and proceedings aforesaid, may be reversed, annulled and held as intirely void; and that he may be restored to all things which he hath lost by reason of the judgment aforesaid: And he likewise prays, that the court of the said lord the king here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters

matters aforesaid above for error assigned : and that the said *Kinvyn Harry* and *Elizabeth* to the error aforesaid may rejoin, &c.

The defendant
appears and joins
in error.

Whereupon the said *Kinvyn Harry* and *Elizabeth* his wife freely here in court by *J. L.* their attorney come, and having heard the error aforesaid immediately say, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, and pray likewise, that the court of the said lord the king now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid above for error assigned, and that the judgment aforesaid may be in all things affirmed : But because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the lord the king until wheresoever, &c. to hear their judgment of and upon those premises, because the court of the said lord the king now here thereof not yet, &c. On which day before the said lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid : And because it seems necessary and expedient to the court of the said lord the king now here, before they proceed farther in this behalf, that the said lord the king should be certified, whether there is any writ original against the said *Howell*, at the suit of the said *Kinvyn Harry* and *Elizabeth* his wife in the plea aforesaid, in the said court of the said lord the king of the bench at *Westminster* filed of record of *Hillary* term in the 9th year of the reign of the said lord the now king, or not ; *William Thursby*, esq; the *custos brevium* of the said lord the king of the bench is commanded, that searching the original writs of the county of *Monmouth* aforesaid of the said *Hillary* term in the 9th year aforesaid, being in his custody filed of record, he certify what he shall find of that writ together with the return thereof, as fully and intirely as it remains with him, without delay to the said lord the king, wheresoever he shall then be in *England*, together with the writ of the said lord the king to him therefore directed :

Curiorari to the
custos brevium to
inform the
court ;

who certifies an
original of *Hilla-*
ry term.

Which said *W. T.* esq; the *custos brevium* hath thereon returned and certified to the said lord the king, that having searched the original writs of the said lord the king of his county of *Monmouth* of *Hillary* term in the 9th year of the reign of the said lord the now king, being in his custody of record, there is a certain writ original between the parties aforesaid in the plea aforesaid in his custody filed of record ; the tenor of which said writ, together with the return of the same, as fully and intirely as it remains in his custody filed of record he hath certified to the said lord the king, as appears in a certain schedule to the same writ annexed as by the writ aforesaid he was commanded ; which said writ follows in these words, to wit, *William*, &c. [reciting the writ to] And have there the names of the pledges, and this writ. Witness ourself at *Westminster* the 3d day of *January* in the 9th year of our reign.

Killingham.

Pledges

The sheriff's return.

Pledges to prosecute, *John Doe* and *Richard Roe*; the within named *Howell* hath nothing in my bailiwick whereby he may be attached.

Geo. Lewis, esq; sheriff.

And upon this the same *Howell John Howell* prays, that the judgment aforesaid for the error aforesaid and others being in the record and proceedings aforesaid may be reversed, annulled and held as intirely void, and that he may be restored to all thing which he hath lost by reason of the judgment aforesaid: And the said *Kinvyn* and *Elizabeth* farther pray, that the judgment aforesaid may be in all things affirmed: But because the court, &c.

Renault and Graham.

AND it is granted him, &c. whereby *Henry St. John*, bart. *custos brevium* of the court of the said lady the queen of the bench aforesaid is commanded, that searching the writs original of the county of *Middlesex* aforesaid of the octave of the purification of the blessed *Mary* of *Hillary* term in the 9th year of the reign of the said lady the queen, being in his custody of record, and what of the said writ between the parties aforesaid he shall find, he without delay certify to the said lady the queen wheresoever, &c. together with the writ of the said lady the queen to him therefore directed: Which said *custos brevium* hath thereupon returned and certified to the said lady the queen that by virtue of the writ aforesaid to him directed, having searched the writs original of the said lady the queen of the county of *Middlesex* of *Hillary* term in the 9th year of her reign aforesaid, in his custody filed of record, there is no original writ between the parties aforesaid in the plea aforesaid in his custody filed of the said term which he can certify to the said lady the queen, which said writ of *certiorari*, together with the return of the same, is filed among the records without day of this term: And as to the return of the said writ of *certiorari* above prayed, to certify whether a writ of inquiry of damages or any such inquisition of the said octave of the purification of the blessed *Mary* between the parties aforesaid is filed of record or not, the same *custos brevium* of the said lady the queen hath not returned the said writ, nor done any thing therein: And thereupon the said *John Graham* prays a writ of the said lady the queen, to warn the said *John Renault* to be before the lady the queen to hear the record and proceedings aforesaid, &c. and it is granted him &c. whereby the sheriff of *Middlesex* is commanded that by good, &c. he give notice to the said *John Renault*, that he be before the said lady the queen from the day of the Holy Trinity in 15 days wheresoever, &c. to hear the record and proceedings aforesaid, if, &c. The same day is given to the said *John Graham*, &c.

No original, nor writ of inquiry, assigned for error of a wrong term.

No original certified. Salk 782,

As to the writ of inquiry non misit breve.

Seire facias awarded.

Defendant appears and alleges an original.

Certiorari to the *custos brevium*;

who certifies as original of the right term.

[237]

¶ On which day before the lady the queen at *Westminster* comes the said *John Graham* by his attorney last above named; and the sheriff hath not returned the writ: And the said *John Renault* freely comes here in court by *John Allen* his attorney, &c. And thereupon the said *John Graham* as before says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is manifest error, alledging the errors aforesaid by him in form aforesaid alledged: And he prays, that the judgment aforesaid, for the errors aforesaid and others being in the record and proceedings aforesaid, may be reversed, annulled, and held as entirely void, and that the said *John Renault* to those errors may rejoin: Whereupon the said *John Renault* says, that there is a certain writ original between the parties aforesaid in the plea aforesaid of *Hillary* term in the 9th year of the reign of the said lady the now queen in the said court of the said lady the queen of the bench filed of record: And he prays a writ of the said lady the queen to the said *custos brevium* of the said lady the now queen of the bench aforesaid to be directed; to certify the said lady the now queen more fully of the truth thereof; and it is granted him, &c. Whereby the said *custos brevium* of the said lady the queen of the bench aforesaid is commanded, that searching the files of the writs original of the county of *Middlesex* aforesaid of *Hillary* term in the 9th year of the reign of the said lady the now queen aforesaid, being in his custody of record, and what of the original writ aforesaid between the parties aforesaid he shall thereon find, together with the return of the same, as fully and intirely as it remains with him, he without delay certify to the said lady the queen wheresoever, &c. together with the writ of the said lady the queen to him therefore directed: The same day is given to the parties aforesaid, &c. And the said *custos brevium* of the said lady the queen hath thereon returned and certified, that having searched the files of original writs of the said lady the queen of the county of *Middlesex* of the said *Hillary* term in the 9th year of the reign of the said lady the queen, in his custody filed of record, there is a certain writ original between the parties aforesaid in the plea aforesaid in his custody filed of the said *Hillary* term, the tenor of which said writ, together with the return of the same, as fully and intirely as it remains in his custody filed of record, he hath certified to the said lady the queen, as appears in a certain schedule to this writ annexed, as by the writ aforesaid he was commanded; which said writ follows in these words, to wit, *Anne* by the grace of God, &c. (*so recite the writ to*) to the damage of the said *John Renault* 130*l.* as he says; and have there the names of the pledges and this writ. Witness ourself at *Westminster* the second day of *January* in the ninth year of our reign.

Barnes.

By the lord keeper of the great seal of *Great Britain*, at the petition of the plaintiff.

Pledges

Pledges to prosecute *John Doe* and *Richard Roe*; the within named *John Gram* hath nothing in my bailiwick whereby he can be attached.

The answer of $\left\{ \begin{array}{l} G. F. \text{ kn.} \\ \text{and} \\ F. E. \text{ kn.} \end{array} \right\}$ sheriff.

And upon this the said *J. Reynault* by his attorney aforesaid comes and immediately says, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid; and prays likewise that the court of the said lady the queen now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid above for error assigned; but because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid by the court of the said lady the queen here until where-soever, &c. to hear their judgment thereof, because the court of the said lady the now queen thereof not yet, &c.

In nullo est error.

Davey against Arnold.

Afterwards, to wit, on *Wednesday* next after three weeks of the Holy *Trinity* in that same term, before the lady the queen at *Westminster* comes the said *George Davey* in his proper person, and says, that the execution of the judgment aforesaid remains to be made to him; therefore he prays a writ of the lady the queen to be directed to the sheriff of *Surry* aforesaid, to warn the said *Elizabeth* to be before the said lady the queen where-soever, &c. to shew if she hath or can say any thing for herself why the said *George* should not have his execution thereof against her, as well of the possession of his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances, as of his damages, costs and charges, according to the force, form and effect of the recovery aforesaid; and it is granted him, &c. whereby the sheriff of *Surry* is commanded that by good and lawful men of his bailiwick he give notice to the said *Elizabeth* that she be before the lady the queen from the day of *St. Michael* in three weeks where-soever, &c. to shew in form aforesaid, if, &c. and farther, &c. The same day is given to the said *George*, &c. On which day before the lady the queen at *Westminster* comes the said *G.* in his proper person, and the sheriff of *Surry* aforesaid, to wit, *W. E.* esq; returns that the said *E. Arnold* hath nothing in his bailiwick whereby he can give notice to her, neither is she found in the same, and the said *E.* doth not come: Therefore the sheriff of *Surry* is as before commanded, that by good, &c. he give notice to the said *E.* that she be before the lady the queen on the octave of *St. Martin* where-soever, &c. to shew in form aforesaid, if, &c. and farther, &c. The same day is given to the said *G.* &c. On which day

Nonpro in error after two Scire facias's.

Defendant appears and alleges an original.

Certiorari to the *custos brevium*;

who certifies as original of the right term.

[237]

Et c. On which day before the lady the queen at *Westminster* comes the said *John Graham* by his attorney last above named; and the sheriff hath not returned the writ: And the said *John Renault* freely comes here in court by *John Allen* his attorney, Et c. And thereupon the said *John Graham* as before says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is manifest error, alledging the errors aforesaid by him in form aforesaid alledged: And he prays, that the judgment aforesaid, for the errors aforesaid and others being in the record and proceedings aforesaid, may be reversed, annulled, and held as entirely void, and that the said *John Renault* to those errors may rejoin: Whereupon the said *John Renault* says, that there is a certain writ original between the parties aforesaid in the plea aforesaid of *Hillary* term in the 9th year of the reign of the said lady the now queen in the said court of the said lady the queen of the bench filed of record: And he prays a writ of the said lady the queen to the said *custos brevium* of the said lady the now queen of the bench aforesaid to be directed; to certify the said lady the now queen more fully of the truth thereof; and it is granted him, Et c. Whereby the said *custos brevium* of the said lady the queen of the bench aforesaid is commanded, that searching the files of the writs original of the county of *Middlesex* aforesaid of *Hillary* term in the 9th year of the reign of the said lady the now queen aforesaid, being in his custody of record, and what of the original writ aforesaid between the parties aforesaid he shall thereon find, together with the return of the same, as fully and intirely as it remains with him, he without delay certify to the said lady the queen wheresoever, Et c. together with the writ of the said lady the queen to him therefore directed: The same day is given to the parties aforesaid, Et c. And the said *custos brevium* of the said lady the queen hath thereon returned and certified, that having searched the files of original writs of the said lady the queen of the county of *Middlesex* of the said *Hillary* term in the 9th year of the reign of the said lady the queen, in his custody filed of record, there is a certain writ original between the parties aforesaid in the plea aforesaid in his custody filed of the said *Hillary* term, the tenor of which said writ, together with the return of the same, as fully and intirely as it remains in his custody filed of record, he hath certified to the said lady the queen, as appears in a certain schedule to this writ annexed, as by the writ aforesaid he was commanded; which said writ follows in these words, to wit, *Anne* by the grace of God, Et c. (*so recite the writ to*) to the damage of the said *John Renault* 130 l. as he says; and have there the names of the pledges and this writ. Witness ourself at *Westminster* the second day of *January* in the ninth year of our reign.

Barnes.

By the lord keeper of the great seal of *Great Britain*, at the petition of the plaintiff.

Pledges

Pledges to prosecute *John Doe* and *Richard Roe*; the within named *John Graham* hath nothing in my bailiwick whereby he can be attached.

The answer of $\left\{ \begin{array}{l} G. F. \text{ kn.} \\ \text{and} \\ F. E. \text{ kn.} \end{array} \right\}$ sheriff.

And upon this the said *J. Reynault* by his attorney afore said comes and immediately says, that there is no error either in the record and proceedings afore said, or in the rendition of the judgment afore said; and prays likewise that the court of the said lady the queen now here may proceed to the examination as well of the record and proceedings afore said, as of the matters afore said above for error assigned; but because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties afore said by the court of the said lady the queen here until where-soever, &c. to hear their judgment thereof, because the court of the said lady the now queen thereof not yet, &c.

In nullo est error.

Davey against Arnold.

Afterwards, to wit, on *Wednesday* next after three weeks of the *Holy Trinity* in that same term, before the lady the queen at *Westminster* comes the said *George Davey* in his proper person, and says, that the execution of the judgment afore said remains to be made to him; therefore he prays a writ of the lady the queen to be directed to the sheriff of *Surry* afore said, to warn the said *Elizabeth* to be before the said lady the queen where-soever, &c. to shew if she hath or can say any thing for herself why the said *George* should not have his execution thereof against her, as well of the possession of his term afore said yet to come of and in the tenements afore said with the appurtenances, as of his damages, costs and charges, according to the force, form and effect of the recovery afore said; and it is granted him, &c. whereby the sheriff of *Surry* is commanded that by good and lawful men of his bailiwick he give notice to the said *Elizabeth* that she be before the lady the queen from the day of *St. Michael* in three weeks where-soever, &c. to shew in form afore said, if, &c. and farther, &c. The same day is given to the said *George*, &c. On which day before the lady the queen at *Westminster* comes the said *G.* in his proper person, and the sheriff of *Surry* afore said, to wit, *W. B. esq;* returns that the said *E. Arnold* hath nothing in his bailiwick whereby he can give notice to her, neither is she found in the same, and the said *E.* doth not come: Therefore the sheriff of *Surry* is as before commanded, that by good, &c. he give notice to the said *E.* that she be before the lady the queen on the octave of *St. Martin* where-soever, &c. to shew in form afore said, if, &c. and farther, &c. The same day is given to the said *G.* &c. On which day

Nonpro in error after two Scire facias's.

day before the lady the queen at *Westminster* comes the said *G.* in his proper person, and the sheriff of *Surry* aforesaid, to wit, the said *W. B.* esq; likewise returns that the said *E.* hath nothing in his bailiwick whereby he can give her notice, neither is she found in the same; and the said *E.* altho' the 4th day of plea solemnly called, doth not come, but hath made default: And upon this the said *G.* says, that the said *E.* hath not yet assigned error or errors in the record or proceedings aforesaid: Therefore day is given to the parties aforesaid before the lady the queen at *Westminster* until *Wednesday* next after 15 days of *St. Martin* where-soever, &c. to wit, to the said *E.* to assign error or errors in the record and proceedings aforesaid, &c. On which day before the lady the queen at *Westminster* comes the said *G.* in his proper person, and the said *E.* on the same day solemnly called comes not, but hath likewise made default, nor doth farther prosecute the writ of error aforesaid against the said *G.* Therefore it is considered, that the said *E.* be in mercy, and that the said *G.* have thereof execution against the said *E.* as well of the possession of his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances, as of his damages, costs and charges aforesaid, according to the force, form and effect of the recovery aforesaid, &c. And farther it is considered, that the said *G.* recover against the said *E.* 5*l.* 10*s.* to the same *G.* by the court of the said lady the queen now here, according to the form of the statute thereof made and provided, for his damages, costs and charges which he hath sustained by reason of the delay of the execution of the judgment aforesaid on pretence of prosecuting the said writ of error; and that the said *George* have thereof likewise execution, &c.

3 H. 7. c. 20.

[238]

Wallcot and Dillon.

Error in the
king's bench in
Ireland.

Ireland, to wit. **T**HE lord the king sent to his trusty and well beloved counsellor *Richard Pyne*, kn^t. his chief justice, assigned to hold pleas in his court before the king himself in his kingdom of *Ireland*, his writ close in these words, to wit, *William* the third, by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. To our trusty and well beloved counsellor *R. Pyne*, kn^t. our chief justice, assigned to hold pleas in our court before us in our kingdom of *Ireland*, greeting; Because in the record and proceedings, as also in the rendition of the judgment in our court before us in the kingdom of *Ireland*, on the tenor of the record and proceedings of a certain judgment on a certain indictment against *T. W.* late of *L.* gent. deceased, for certain high treasons touching the person of the lord *Charles* the second, late king of *England*, and the record and proceedings of reversal of that judgment by reason of error happening, and also the record and proceedings of affirmance of the same judgment of reversal by us in our writ close to you lately sent, a manifest error has happened, to the great damage

Error by the heir
to reverse a judg-
ment of reversal
in the king's
bench given on
an indictment of
high treason at
the *Old Baily*,
whereon the an-
cestor was found
guilty and execu-
ted.

damage of *J. D.* widow, countess of *R.* in our kingdom of *Ireland*, assignee of *W. D.* esq; late earl of *R.* aforesaid; to which said *William* the said lord *Charles* the second, late king of *England*, by his letters patent under his great seal of *England* gave and granted all the lands and tenements which belonged to the said *T. W.* in our kingdom of *Ireland*, which were forfeited to the same late king by the said attainder of him the said *Thomas*, to hold to the same *William*, his heirs and assigns for ever, as we by the complaint of the said *Isabel* have understood: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the same *J.* in this behalf, command you, that if judgment be given on the tenor of the record and proceedings aforesaid, so as aforesaid transmitted, then the record and proceedings of that judgment, with all things touching the same, you distinctly and openly transmit to us under your seal, and this writ, so that we may have them from the day of the Holy Trinity in three weeks, wheresoever we shall then be in *England*, that the record and proceedings being inspected, we may farther cause to be done therein what of right shall be to be done, and cause notice to be given to one *J. W.* son and heir of the said *T. W.* deceased, that he be then there to hear the record and proceedings aforesaid, and farther to do and receive what our court before us in *England* shall consider in the premisses. Witness ourself at *Westminster* 13th day of *May* in the 11th year of our reign.

The record and proceedings whereof mention is within made, with all things touching them, I transmit before the lord the king wheresoever, &c. at the day and place within contained, in a certain record to this writ annexed; and I have caused notice to be given to the within named *John W.* that he be then there to proceed in the motion aforesaid, as I am within commanded. The answer of *R. Pyne*.

Parl. Rep. 127
to 137. 186 to
191. Salk. 632.
4 Mod. 395a,
402.

Pleas of the crown before the lord the king at the king's court of *Michaelmas* term in the 9th year of the reign of our lord *William* the third, by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. Witness *Richard Pyne*, knt. *Savage*.

The lord the king sent to his trusty and well beloved counsellor *R. P.* knt. his chief justice, assigned to hold pleas in his court before the king himself in his kingdom of *Ireland*, his writ close in these words, to wit, *William* the third, by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. To our trusty and well beloved counsellor *R. Pyne*, knt. our chief justice assigned to hold pleas in our court before ourself in our kingdom of *Ireland*: The tenor of the record and proceedings, as well of the rendition of the judgment on a certain indictment against *T. W.* late of *L.* gent. deceased, for certain high treasons touching the person of the lord *Charles* the second, late

[239]

king of *England*, whereof he was indicted, and thereon convicted by a certain jury of the country thereon between the said lord the late king and the said *Thomas*, taken before the justices of the lord the king, assigned to deliver the gaol of *Newgate* for the city of *L.* of the prisoners being in the same, and judgment was thereon given for the said late king against the said *Thomas W.* which said record and proceedings thereof, by reason of error happening we have caused to be brought into our court before us in *England*, to the great damage of him the said *J. W.* son and heir of the said *T. W.* and we in our same court before us, for divers errors in the record and proceedings aforesaid found, the judgment aforesaid have reversed; which said record and proceedings afterwards we have caused to be brought before us in our parliament in *England*, by reason of error happening, as he hath alledged; and afterwards in the same court of parliament it was considered, that the judgment of reversal of the judgment aforesaid should be in all things affirmed; and which said record and proceedings before us in our same court before us in *England* now remaining, as it is said, by *John Holt*, knt. our chief justice assigned to hold pleas before us in *England*, by virtue of our writ of *certiorari* to us in our chancery in *England* certified, and on the files of our same chancery of record remaining, together with the tenor and return of the same, we have sent to you inclosed in these presents, commanding you, that inspecting the tenors aforesaid you farther cause to be done therein what of right shall be to be done. Witness *Thomas* archbishop of *Canterbury* and the other keepers and justices of the kingdom at *Westminster* 5th day of *July* in the 9th year of our reign.

Layton,
Allowed *R. Pyne.*

Certiorari on
the indictment.

William the Third, &c. To our trusty and well beloved *J. Holt*, our chief justice assigned to hold pleas before us, greeting: Being willing for certain reasons to be certified on the tenor of the record and proceedings as well of the rendition of the judgment on a certain indictment against *T. W.* late of *L.* gent. deceased, for certain high treasons touching the person of the lord *Charles* the second, late king of *England*, whereof he was indicted, and thereupon by a certain jury of the country thereon between the said late lord the king and the said *Thomas*, taken before the justices of the said late lord the king assigned to deliver the gaol of *Newgate* for the city of *London* of the prisoners being in the same, was convicted, and judgment was thereupon given for the said late king against the said *T. W.* which said record and proceedings thereof by reason of error happening we have caused to brought into our court before us; and we in our said court before us have reversed the judgment aforesaid for divers errors in the judgment and proceedings aforesaid found; which said record and proceedings afterwards we have caused to be brought before us in our parliament by reason of error hap-

pening, as it is alledged; and afterwards in the same court of parliament it was considered, that the judgment of reversal of the judgment aforesaid should be in all things affirmed; and which said record and proceedings before us in our same court before us now remaining, as it is said, We command you, that the tenor of the record and proceedings aforesaid with all things touching the same, you distinctly and openly send to us in our chancery without delay, wheresoever we shall then be in *England*, under your seal, and this writ. Witness *Thomas* archbishop of *Canterbury* and the other keepers and justices of the kingdom at *Westminster* 21st day of *July* in the 9th year of our reign.

The answer of J. Holt, knt. the chief justice within written:

The tenor of the record and proceedings within written, with all things touching the same, I certify to the lord the king in his chancery in a certain schedule to this writ annexed, as I am within commanded.

J. Holt.

Pleas before the lord the king at *Westminster* of *Easter* term in the 7th year of the reign of the lord *William* the third, now king of *England*, &c. among the pleas of the crown, Roll 3. *London* to wit, The lord the king sent to his justices by his letters patent made under the great seal of *England*, to inquire by the oath of good and lawful men of the city of *London*, and other ways, methods and means, whereby they could or might better know of all treasons, misprisions of treason, insurrections, rebellions and other misdemeanors, offences and injuries whatever, and also to his justices assigned to deliver his gaol of *N.* for the city of *London* of the prisoners being in the same, and to every of them, his writ close in these words, to wit, *William*, &c. To our justices by our letters patent made under the great seal of *England*, to inquire by the oath of good and lawful men of the city of *L.* and other ways, methods and means, whereby they could or might better know of all treasons, misprisions of treason, insurrections, rebellions and other misdemeanors, offences and injuries whatever, and also to our justices assigned to deliver our gaol of *Newgate* for the city of *L.* of the prisoners being in the same, and to every of them, greeting: Because in the record and proceedings, and also in the rendition of the judgment of a certain indictment against *T. W.* late of *L.* gent. deceased, for certain high treasons touching the person of the lord *Charles* the second, late king of *England*, whereof he is indicted, and thereupon by a certain jury of the county thereon between the said lord the late king and the said *T.* taken before the justices of the said lord *Charles* the second, late king of *England*, &c. assigned to deliver the gaol aforesaid, is convicted, and judgment is thereon given, as it is said, manifest error hath happened, to the great damage of *J. W.* son and heir of the said *T.* as by his

D d 2

complaint

[240]

Writ of error to remove the indictment into chancery.

complaint we have understood; We being willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the said *John* in this behalf, command you, if judgment be given, then the record and proceedings aforesaid, with all things touching the same, to us under your or one of your seals you distinctly and openly send, and this writ, so that we may have them from the day of *Easter* in three weeks, where-soever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein to correct that error what of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness ourself at *Westminster* 16th day of *March* in the 7th year of our reign. The execution of this writ appears in a schedule and record to this writ annexed. The answer of *Thomas Lane*, knt. mayor of the city of *London* and one of the justices within written. The record and proceedings, whereof in the writ aforesaid mention is made, follows in these words, to wit, Be it remembered, that by a certain inquisition taken for the most serene lord the king at *Justice-Hall* in the *Old Bailey London*, in the parish of *St. Sepulchre*, in the ward of *F. Without*, *London*, aforesaid, on *Thursday*, to wit, the 12th day of *July* in the 35th year of the reign of our lord *Charles* the second, by the grace of God of *England*, &c. before *W. P.* knt. mayor of the city of *London*, *F. P.* knt. chief justice of the said lord the king of the bench, &c. justices of the said lord the king assigned to hold pleas before the king himself, &c. *Henry Tulse*, knt. *James Smith*, knt. &c. aldermen of the said city, and their companions, justices of the said lord the king, by the letters patent of the said lord the king to the same justices before named and any four or more of them under the great seal of the said lord the king of *England* made, to inquire by the oath of good and lawful men of the city of *London*, and other ways, methods and means, whereby they could or might better know as well within liberties as without, by whom the truth of the fact they might the better know, and inquire of all treasons, misprisions of treason, insurrections, rebellions, counterfeittings, clippings, washings, false coinings, and other falsities of the monies of this kingdom of *England* or other kingdoms or dominions whatever, and of all murders, felonies, homicides, killings, burglaries, rapes, unlawful congregations and conventicles, speaking of words, combinations, misprisions, confederacies, false allegiances, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligencies, concealments, maintenances, oppressions, champarties, deceipts and other misdemeanors, offences and injuries whatever, and also the accessaries of the same, within the city aforesaid, as well within liberties as without, by whomsoever and howsoever had, done, perpetrated or committed, by whom, or to whom, when, how, and in what manner, and of other articles and circumstances the premisses and every of them howsoever concerning, more fully the truth and the same treasons and other the premisses

The commission
of oyer and ter-
miner.

premises to hear and determine according to the law and custom of the kingdom of the said king of *England* assigned, by the oath of *R. A. Esq. R. P. &c.* good and lawful men of the city of *L.* aforesaid, it is presented, That *T. W.* late of *L.* as a false traitor against the most illustrious and most excellent prince our lord *Charles* the second, &c. his king and natural lord, not having the fear of God in his heart, nor considering the duty of his allegiance, but being moved and seduced by the instigation of the devil, the love and true, due and natural obedience, which a true and faithful subject of the said lord the king towards the said lord the king should bear and of right is bound to bear, wholly withdrawing, and with all his might intending the peace and common tranquility of this kingdom of *England* to disturb, and war and rebellion against the lord the king to raise and move, and the government of the said lord the king in this kingdom of *England* to subvert, and the said lord the king from the title, honour, and royal name of the imperial crown of his kingdom of *England* to depose and deprive, and the said lord the king to death and final destruction to bring and put, on the second day of *March* in the 35th year of the reign of the lord *Charles* the second, now king of *England*, &c. and at divers days and times as well before as after, at the parish of *St. Michael B.* in the ward of *B. London*, maliciously and traitorously, with divers other traitors to the jurors aforesaid unknown, did conspire, compass, imagine and intend the said lord the king his supreme lord, not only of the regal state, title, power and government of his kingdom of *England* to deprive and put out, but also the same lord the king to kill and to death bring and put, and the antient government of his kingdom of *England* to change, alter and entirely subvert, and miserable slaughter among the subjects of the said lord the king throughout his whole kingdom of *England* to cause and procure, and insurrection and rebellion against the said lord the king to move and excite within this kingdom of *England*; and to perfect and accomplish the same his most wicked treasons and traitorous compassings, imaginations and intentions, the same *Tho. Walcott* as a false traitor then and there and at divers other days and times, as well before as after, maliciously, traitorously and advisedly assembled himself, met and consulted with the said other traitors to the jurors aforesaid unknown, and with the same treated of and for the executing and accomplishing the same his treasons and traitorous compassings, imaginations and intentions, and that the said *Tho. Walcot* as a false traitor maliciously, traitorously and advisedly then and there and at divers other days and times, as well before as after, assumed upon himself and to the said other traitors promised he would be aiding and assisting in the execution of his treasons and traitorous compassings, imaginations and intentions aforesaid, and in the provision of arms and armed men to perfect and accomplish the same his treasons and traitorous compassings, imaginations and intentions aforesaid; and to perfect and accomplish the same his

[241]

13 Ca. 2. c. 1.

Walcot indicted.

Pleads Not
guilty;and is found
guilty.

The judgment.

most wicked treasons and traiterous compassings, imaginations and intentions aforesaid, the same *T. W.* as a false traitor maliciously, traiterously and advisedly then and there arms, to wit, blunderbusses, &c. procured and prepared, against the duty of his allegiance, against the peace of the said lord the now king, his crown and dignity, &c. and also against the form of the statute in such case made and provided, &c. Wherefore the sheriffs of the city aforesaid were commanded, that they should not omit, &c. but should take the said *T. W.* if &c. to answer, &c. And now, to wit, at the gaol-delivery of the said lord the king of *N.* held for the city of *L.* at *Justice-Hall* aforesaid in the said parish of *St. S.* in the ward of *P. Without*, *London*, aforesaid, the said *Thursday* the 12th day of *J.* in the 35th year above said, before the said *W. P.* knt. mayor of the city of *L.* *T. P.* knt. chief justice, &c. another justice of the said lord the king assigned to hold pleas before the king himself, *W. T.* knt. *J. E.* knt. &c. aldermen of the said city, and others their companions and justices of the said lord the king assigned to deliver his gaol of *N.* of the prisoners being in the same, to the said justices of the said lord the king before named by their own proper hands delivered the indictment aforesaid here in court of record in form of law to be determined, &c. Whereupon at this same gaol-delivery of the said lord the king of *N.* held for the city aforesaid at *Justice-Hall* aforesaid, the said *Thursday* 12th day of *July* in the 35th year above said, before the said justices last mentioned comes the said *T. W.* under the custody of *N. D.* knt. and *P. R.* knt. sheriffs of the city aforesaid, into whose custody for the cause aforesaid he was before committed, to the bar here brought in his proper person, who is committed to the said sheriffs of *L.* &c. and immediately of the premisses aforesaid in the indictment aforesaid specified on him above charged is asked how he would thereof acquit himself; the same *T. W.* says that he is not thereof guilty, and thereof of good and ill he puts himself on the country: Therefore immediately let a jury thereon come, &c. before the said justices last named here, &c. And the jurors of that jury by the said sheriffs hereto impannelled, to wit, *N. C.* &c. being called come, who to say the truth of the premisses being elected, tried and sworn, say on their oath, that the said *T. W.* is guilty of the high treason aforesaid in the indictment aforesaid specified upon him above charged, in manner and form as by the indictment aforesaid above against him is supposed, and that the same *T. W.* had no goods or chattels or tenements to their knowledge; and hereupon the said *T. W.* is immediately asked if he has or knows any thing to say for himself why the court of the said lord the king here should not proceed to judgment and execution thereof upon the verdict aforesaid; who nothing farther says than as before he had said: Whereupon all and singular the premisses being seen, and by the court here fully understood, it is considered by the court here, that the said *T. W.* be carried to the gaol of the said lord the king of *N.* from whence he came, and there to be put on

on a hurdle, and from thence to the gallows of *Tyburn* drawn, and there by the neck be hung and cut down alive to the ground, and that his privy members be cut off, and his intrails be taken out of his belly and put into the fire and be there burnt, and that his head be cut off, and that his body be divided into four parts, and that the head and those quarters be put where the lord the king will appoint them, &c. Wherefore the sheriffs are commanded that they take him if, &c. to satisfy, &c. And now, to wit, *Thursday* next after a month of *Easter* in this same term, before the lord the now king at *Westm.* comes one *J. W.* the son and heir of the said *T. W.* deceased, of the high treason aforesaid and convicted and attainted, by *A. B.* his attorney, and having the record aforesaid on which the said *T.* in form aforesaid is convicted and attainted says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that it appears by the record aforesaid, that the judgment aforesaid is given for the said lord the late king, when by the laws of this kingdom of *England* the judgment aforesaid ought to have been given for the said *T. W.* and in that it is manifestly erroneous: There is error also in this, to wit, that the crimes in and by the indictment aforesaid against the said *T. W.* charged, are by the laws of this kingdom of *England* uncertainly, doubtfully and too generally alledged, and that the said indictment supposes and on the same *T.* charges and imposes crimes in a different manner and intirely in themselves disagreeing, and that the judgment thereon given is contrary to the laws of *England*, and not to be pronounced or set for or upon such crimes as in the indictment aforesaid are supposed; and that it is manifestly erroneous; wherefore he prays the judgment of the court here in the premises, and that the judgment and attainder aforesaid, for the errors aforesaid and others in the record and proceedings aforesaid found and being, may be reversed, annulled and held as intirely void; and that he the said *J. W.* the son and heir of the said *T.* may be restored to all things which he the same *J.* by reason of the judgment and attainder aforesaid hath lost; and that the court here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters above for errors assigned, &c. And because the court of the lord the king here are not yet advised to give their judgment of and upon the premises, day therefore is given to the said *J. W.* in the state as now, &c. until on the morrow of the Holy *Trinity* before the lord the king where-soever, &c. to hear their judgment thereon, &c. On which said morrow of the Holy *Trinity* before the lord the king at *Westminster* comes the said *J. W.* by his attorney aforesaid, and as before prays judgment, and that the judgment and attainder aforesaid against the said *T. W.* given, for the errors aforesaid and others in the record and proceedings aforesaid found and being, may be reversed, annulled and held as intirely void; and that he the said *J. W.* the son and heir of the said *T.* may be restored to all things which he the said *J.* by reason of the judgment and attainder aforesaid

*In his sight and
beliving omitted,
and therefore re-
versed.*

The heir appears
and assigns error,

[242]

The sentence not
pursuant to the
laws of the land.

Continuance.

aforesaid hath lost, and that the court here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid above for errors assigned, &c. And because the court of the lord the king here are not yet advised to give their judgment of and upon the premisses, farther day therefore is given to the said *J. W.* until before the said lord the king where-soever, &c. to hear their judgment thereon, &c. On which day

before the lord the king at *Westminster* comes the said *J. W.* by his attorney aforesaid, and as before prays judgment, and that the judgment and attainder aforesaid, for the errors aforesaid and others in the record and proceedings aforesaid found and being, may be reversed, annulled, and held as intirely void; and that he the said *J. W.* the son and heir of the said *T. W.* may be restored to all things which he the said *J. W.* by reason of the judgment and attainder aforesaid hath lost; and that the court of the lord the king here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters above for errors assigned, &c. Whereupon all and singular the premisses being seen, and by the court here understood, and the record and proceedings aforesaid, and the errors aforesaid by the said *J. W.* above assigned, and others in the record and proceedings aforesaid found and being, being diligently examined, and mature deliberation being thereon first had, it is considered, that the judgment aforesaid, for the errors aforesaid and others in the record and proceedings aforesaid found and being, be reversed, annulled and held as intirely void; and that the said *J. W.* the son and heir of the said *T. W.* be restored to all things which he the said *J. W.* by reason of the judgment and attainder aforesaid hath lost; and that the said *J. W.* may go thereof without day, &c. Afterwards, to wit, the sixth day of *July* in the 8th year of the reign of the lord *William* the third king of *England*, &c. the lord the king sent to *J. Holt*, knt. chief justice of the said lord the king assigned to hold pleas before the king himself, his writ close in these words, to wit, *William* the third, &c. To our trusty and well beloved *J. Holt*, knt. our chief justice assigned to hold pleas before us: Because in the record and proceedings, as also in the rendition of the judgment of a certain indictment against *T. W.* late of *London*, gent. now deceased, for certain high treasons touching the person of the lord *Charles* the second, late king of *England*, whereof he was indicted, and thereupon by a certain jury of the country thereon between the said late king and the said *T. W.* taken before the justices of the said late king assigned to deliver the gaol, being convicted, and judgment thereupon was given for the said late king against the said *T. W.* as it is said, which said record and proceedings aforesaid, by reason of error happening, we have caused to be brought into our court before us, and the judgment thereof in our same court before us is reversed: And because in the reversal of the judgment aforesaid before us on the writ of error aforesaid a manifest error hath happened, to the great damage of one *Isabel Dillen*, widow, countess

Judgment re-
versed.

Writ of error in
parliament.

countess of *R.* in our kingdom of *Ireland*, as by her complaint we have understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the same *Isabel* in this behalf, command you, that if the judgment on the writ of error aforesaid be reversed, then you send the record and proceedings aforesaid, with all things touching them, to us in our parliament at the next session, 28th day of this instant month of *July* to be held, and this writ, that the record and proceedings aforesaid being inspected, we may farther cause to be doone therein, with the assent of the lords spiritual and temporal being in the same parliament, what of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness *Thomas* archbishop of *Canterbury* and the rest of the keepers and justices of the kingdom at *Westm.* 6th day of *July* in the 8th year of our reign. By virtue of which said writ the said chief justice the record and proceedings aforesaid, with all things touching them, to the said lord the king in the present parliament with his own proper hands produced, according to the command of the said writ: And hereupon *T. Trevor*, knt. the attorney general of the lord the now king, who for the same lord the king in this behalf prosecutes, before the lord the king and the peers of this kingdom of *England* in this present parliament at *Westminster* in the county of *Middlesex* assembled in his proper person comes and says, that in the record and proceedings, and also in the rendition of the judgment upon the said former writ of the said lord the king to correct error, by the said *J. W.* prosecuted for reversing and annulling of the judgment aforesaid against the said *T. W.* on the indictment aforesaid, for the high treason aforesaid given, there is manifest error, in this, to wit, that where by the record aforesaid it is supposed that the said *J. W.* did put in his place one *A. B.* his attorney to prosecute the said former writ of error in and upon the indictment for the high treason aforesaid, nevertheless the said *A. B.* had no warrant of attorney for the same *J. W.* filed of record; therefore in that there is manifest error: There is error also in this, to wit, that by the record aforesaid it appears that the judgment aforesaid for the reversing and annulling of the judgment aforesaid against the said *T. W.* in form aforesaid given, was given for the said *J. W.* against the said lord the king, when by the law of the land of this kingdom of *England* that judgment ought to have been given for the said lord the king against the same *J. W.* therefore in that there is likewise manifest error: And this he is ready to verify: Wherefore he prays judgment, and that that judgment, for the errors aforesaid and others being in the record and proceedings aforesaid, may be reversed, annulled and held as entirely void; and that the said lord the king to all things, which he by reason of the reversing and annulling of the judgment aforesaid hath lost, may be restored, &c. And the said *T. Trevor*, knt. the attorney general of the lord the now king, who for the same lord the king in this behalf prosecutes, prays a writ of the said lord the king to the said *J.*

Holt,

Return of the
C. J. of the re-
cord with his
own hands into
parliament,

[243]

The attorney
general assigns
errors.

Diminution. No
warrant of at-
torney.]

Certiorari to the
C. J. of the
king's bench.

Who certifies
there is no war-
rant of attorney.

In nullo est error
quoniam.

Continuance.

Judgment to af-
firm the judg-
ment of reversal.

Holt, *knt.* to certify the same lord the king here in the same court of parliament in the premisses more fully the truth thereof; and it is granted him; whereby the said *J. Holt*, *knt.* the chief justice aforesaid, is commanded, that searching the files of the same court of the lord the king before the king himself, whether any warrant of attorney be filed of record in the court of the lord the king before the king himself for one *A. B.* to prosecute a writ of error for the reversal of the judgment of a certain indictment against *T. W.* now deceased, for certain high treasons whereof he is indicted, and thereupon is convicted; to the said lord the king here in the present parliament of this kingdom, he without delay certify; which said *J. Holt*, *knt.* the chief justice aforesaid, to the said lord the king here in the present parliament hath returned and certified, that searching the files of the court of the said lord the king before the king himself of record there, no warrant of attorney for the said *A. B.* to prosecute the writ of error aforesaid for the reversal of the judgment aforesaid is filed, as by the writ aforesaid he is commanded: Whereupon the said *J. W.* afterwards, to wit, 26th day of *November* in the 8th year of the reign of the said lord the now king aforesaid, in his proper person before the said lord the king and the peers here in the present parliament assembled freely comes, and *oyer* being had of the errors aforesaid, immediately says, that neither in the record and proceedings aforesaid upon the said former writ of error, nor in the rendition of the judgment aforesaid for the reversal of the said judgment against the said *T. W.* for the high treasons aforesaid, there is any error. Wherefore he prays that the judgment of reversal of the judgment against the said *T. W.* may be in all things affirmed: But because the court of parliament now here are not yet advised to give their judgment of and upon the premisses, day therefore is given as well to the said *T. Trevor*, *knt.* who prosecutes, &c. as to the said *J. W.* before the said lord the king and the peers in the same court of parliament now here until *Friday*, to wit, 29th day of *January* next ensuing, at *Westminster* in the county of *Middlesex* aforesaid, to hear their judgment thereof, because the court of parliament aforesaid thereof not yet, &c. On which day before the said lord the king and the peers of this kingdom of *England* in the same court of parliament now here at *Westminster* in the county of *Middlesex* aforesaid assembled, comes as well the said *T. Trevor*, *knt.* attorney general of the lord the now king, who prosecutes &c. as the said *J. W.* in his proper person: Whereupon all and singular the premisses being seen, and by the same court of parliament now here more fully understood, and mature deliberation being thereon had, because it seems to the court of parliament now here, that neither in the record and proceedings aforesaid on the said former writ of error, nor in the rendition of the said judgment of reversal of the judgment on the indictment aforesaid, there is any error; and that that record is in nothing vitious or defective in law; It is considered by the same court of parliament now here, that the said judgment of reversal of the judgment

judgment aforesaid be in all things affirmed and remain in his full force and effect, the said causes and matters above for error assigned in any wise notwithstanding; which said record and proceedings before the said lord the king and the peers of this kingdom of *England* so had, by the same court of parliament before the said lord the king into the court of the said king before the king himself wheresoever, &c. are remitted.

And now at this day, to wit, *Monday* next after 15 days of *St. Martin* in this same term, before the lord the king at the king's court comes the said *J. W.* in his proper person, and prays that the court of the lord the king here cause to be done what of right shall be to be done, according to the command of the writ of *mittimus*, as is aforesaid directed; and the tenor of the record and proceedings aforesaid being by the court here inspected, and mature deliberation being thereon had, it is considered, that the said *J. W.* to all things, which he the same *J.* by reason of the judgment and attainder aforesaid hath lost, be restored, &c. and that the writ of the lord the king of restitution issue on the tenor of the record aforesaid, &c.

[244]

The award of restitution by the king's court in *Ireland*.

Afterwards, to wit, *Tuesday* next after three weeks of the Holy *Trinity* in this same term, before the lord the king at *Westminster* comes the said *Isabel Dillon*, widow, Countess of *Roscommon*, late wife of *Wentworth Dillon*, late earl of *Roscommon* in the kingdom of *Ireland*, by *W. B.* her attorney, and says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid for the restitution aforesaid, there is manifest error, to wit, in this, that the writ of *mittimus* aforesaid gave no warrant, power or authority to the said court of the lord the king before the king himself at the king's court, to issue the writ of restitution aforesaid: There is error also in this, that no such judgment for restitution, as by the said court of the lord the king before the king himself at the king's court aforesaid is given, ought by law to be given, and so that judgment for restitution as aforesaid given is void in law and erroneous: Wherefore she prays the judgment of the court here in the premises, and that that judgment for the restitution aforesaid, for the errors aforesaid and others in the record and proceedings found, may be reversed, annulled and held as void; and that she the said *Isabel Dillon* to all things, which she the said *J.* by reason of the judgment of restitution hath lost, may be restored; and that the court here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters above for errors assigned, &c.

Upon which writ of error is brought in the k. b. in *England*.

Errors assigned.

Tho. Carthew.

Maddox

Maddox and Wynne.

Error assigned to
reverse an out-
lawry at the
grand sessions in
Denbighshire.

It not appearing
by the *capias*
whom safely, nor
before what jus-
tices the sheriff
should have the
defendant's body.

No surname.

Seire facias.

[245]

Afterwards, to wit, day next after in this same term, before the lord the king at *Westminster* comes the said *J. M.* by *P. C.* his attorney and says, that in the record and proceedings aforesaid, and also in the proclamation of the outlawry aforesaid, there is manifest error, in this, to wit, that the judgment aforesaid in form aforesaid given, was given for the said *J. W.* and *M.* when by the law of the land of this kingdom of *England* that judgment ought to have been given for the said *J. M.* There is error also in the proclamation of the outlawry aforesaid, in this, to wit, that by the award of the several writs of *capias ad satisfaciend'* aforesaid in the record aforesaid specified the sheriff is commanded, that he should take *J. M.* if, &c. and safely, &c. so that he should have his body before the justices, &c. on *Monday* in the next grand sessions, &c. and it doth not appear whom safely, &c. nor before what justices the said sheriff should have his body, nor for what county the grand sessions aforesaid was to be held: There is error also in the entry of record of the return of the writ of *capias ad satisfaciend'* last mentioned, in this, to wit, that it doth not appear in what bailiwick nor in what place the said *J. M.* was not found: There is error also in this, that by the record aforesaid it appears, that on the several days given by the court of grand sessions aforesaid for the return of the several writs of *capias ad satisfac'* in the record aforesaid mentioned, one *John* without any surname in the record aforesaid, came and appeared by his attorney in the same grand sessions; therefore by the record aforesaid it doth not appear that the said *J. W.* came upon the same days in the same grand sessions, nor that the said *J. W.* came and appeared by his attorney in the same grand sessions; therefore in that there is manifest error: there is error also in the entry of the return of the writ of *exigent*, in this, to wit, that it doth not appear that the sheriff of the county of *D.* returned the writ of *exigent* aforesaid, nor in what place or time the said *J. M.* was first, secondly, thirdly and fourthly proclaimed, and also that in the said record of the entry of the return of the writ of *exigent* aforesaid this word *county* is superfluous and insensible: There is error also in this, that the said *J. M.* was outlawed by the judgment of one of the coroners of the lord the king of the county aforesaid, when by the law of the land the same *J. M.* ought to have been outlawed by the judgment of the coroners; therefore in the proclamation of the outlawry aforesaid there is manifest error: And he prays the writ of the lord the king to warn the said *J. W.* and *M.* to be before the lord the king to hear the record and proceedings aforesaid; and it is granted him, &c. Whereupon the sheriff of the county of *D.* is commanded that by good, &c. he cause notice to be given to the said *J. W.* and *M.* his wife, that they be before the lord the king on the octave of the Holy *Trinity* wheresoever, &c. to hear the record and proceedings aforesaid, if, &c. and farther

farther, &c. The same day is given to the said *J. M.* &c. On which day before the lord the king at *Westminster* comes the said *J. M.* by his attorney aforesaid, and the sheriff of *D.* to wit, *E. D.* bart. returns that he by virtue of the writ aforesaid, to him therefore directed by *R. E.* and *R. S.* good and lawful men of his bailiwick, had caused notice to be given to the said *J. W.* and *M.* his wife, to be before the lord the king at the before mentioned term, to do and receive as the same writ in itself commanded and required; which said *J. W.* and *M.* altho' so forewarned, on the fourth day of plea being solemnly called do not come, nor say any thing in bar or preclusion of the several matters aforesaid above for errors respectively assigned, &c. Whereupon the said *J. M.* as before says, that in the record and proceedings aforesaid, and also in the proclamation of the outlawry aforesaid against him the said *J. M.* there is manifest error, alledging the errors aforesaid by him the said *J. M.* in form aforesaid above respectively alledged; And the same *J. M.* prays that the judgment aforesaid, and also the outlawry aforesaid thereon founded, for the errors aforesaid and others as well in the record and proceedings aforesaid as in the proclamation of the outlawry aforesaid respectively appearing may be reversed, annulled and held as void: and that he the same *J. M.* as well to the common law, as to all things which he by reason of the judgment and outlawry aforesaid hath lost, may be restored; and also that the court of the lord the king now here may proceed to the examination as well of the record and proceedings aforesaid, as of the several matters aforesaid above for error respectively assigned, &c. And because the court of the lord the king here are not yet advised to give their judgment of and upon the premises, day therefore is given to the said *J. M.* before the lord the king from the day of *St. Michael* in three weeks wheresoever, &c. to hear their judgment thereon, because the court of the lord the king thereof not yet, &c. On which day before the lord the king at *Westminster* comes the said *J. M.* by his attorney aforesaid; whereupon all and singular the premises being seen, and by the court of the said lord the king now here more fully understood and considered, and mature deliberation being thereon had, it is considered, that the outlawry aforesaid, for the errors aforesaid being in the record and proceedings aforesaid, be reversed, annulled and held as intirely void; and that he the same *J. M.* as well to the common law, as to all things which he by reason of the outlawry aforesaid hath lost, be restored; whereupon the said *J. W.* and *M.* by *J. M.* their attorney come and pray a day of imparlance to the errors aforesaid for the reversal of the judgment aforesaid by him the said *J. M.* above in form aforesaid assigned: and it is granted them, &c. And thereupon day thereof is given to the parties aforesaid before the lord the king until on the octave of *St. Hillary* wheresoever, &c. to wit, to the said *J. W.* and *M.* to imparl to those errors, and then to rejoin

Scire facit.

Default.

Judgment, that the outlawry be reversed.

The defendants appear and pray a day to answer the errors.

And alledge that
the record is
falsly certified.

Certiorari to the
justices of the
grand sessions.

[246]

rejoin to those errors, &c. On which day before the lord the king at *Westminster* come as well the said *J. M.* as the said *J. W.* and *M.* by their attornies afore said; whereupon the said *J. M.* as before says, that in the record and proceedings afore said, and also in the rendition of the judgment afore said, there is manifest error, alledging the errors afore said by him in form afore said above alledged, and prays that the judgment afore said, for those errors and others, being in the record and proceedings afore said, may be reversed, annulled and held as intirely void; and that he to all things, which he by reason of the judgment afore said hath lost, may be restored; and that the said *J. W.* and *M.* to those errors may rejoin: Whereupon the said *J. W.* and *M.* say, that the record and proceedings afore said to the said lord the king in form afore said sent, and before the lord the king now remaining, is falsly certified, to wit, in the declaration in the record afore said, between the words, Whereon the same *J.* and *M.* and the words, Say that whereas the said *J. M.* are falsly certified, these words (by the said *J. W.* one of the attornies of this court in his proper person) when in the record afore said, before the justices of the said lord the king of his grand sessions of his county of *D.* remaining, are these words (in their proper persons); and also in the certificate of the judgment by *nihil dicit* to the declaration afore said in the record afore said so as afore said certified, between the words, Come as well the said *J.* and *M.* and the words, As the said *J. M.* these words (in their proper persons) are omitted out of the certificate afore said, but they are in the record of the judgment afore said before the said justices of the said lord the king of his grand sessions of the county of *D.* afore said remaining; and also between the words, *John M.* by, and the word afore said, are falsly certified, these words (their attornies) when in the record of the judgment afore said before the said justices of the said lord the king of his grand sessions of the county of *D.* afore said remaining, are these words (his attorney): Whereupon the said *J. W.* and *M.* pray a writ of the lord the king to be directed to the justices of the grand sessions of his county of *D.* afore said, to certify the lord the king more fully the truth thereof; and it is granted them, &c. whereby the justices of the grand sessions of *D.* are commanded, that searching the rolls of the entries of the declarations and judgments thereon in the grand sessions of the lord *James* the second, late king of *England*, of the county of *D.* afore said, held at *W.* in the county afore said on *Monday* the 27th day of *September* in the second year of the reign of the said lord *James* the second, late king of *England*, &c. before *J. C.* knight serjeant at law, and *J. W.* esq; then justices of the said lord the king of his grand sessions of the county of *D.* afore said, and what of the false certificates and omissions afore said they shall find, to the said lord the king from the day of *Easter* in five weeks, wheresoever he shall then be in *England*, they certify, together with the writ of the lord the king to them therefore directed: On which day before the lord the king at *Westminster* *J. J.* knight justice

justice of the lord the king of his grand sessions of the county of *D.* aforesaid, and *S. L.* knight the king's serjeant at law and recorder of the city of *London*, another justice of the said lord the king of his grand sessions of the county of *D.* aforesaid, justices of the said lord the king of his grand sessions of the county of *D.* aforesaid, have to the said lord the king returned and certified, that by virtue of the writ of the said lord the king to them directed, they have searched the rolls of the entries of the declarations and the judgments thereon in the grand sessions of the lord *James* the second, late king of *England* of the county of *D.* aforesaid, held at *W.* in the county aforesaid on *Monday* the 27th day of *September* in the second year of the reign of the said lord *James* the second, late king of *England*, &c. before the said *J. C.* and *J. W.* then justices of the said late lord the king of his grand sessions of the county of *D.* aforesaid, being in their custody of record, and have found among the rolls of the same grand sessions of the entries of the declarations and the judgments thereon of record between the parties aforesaid in the plea aforesaid, that in the declaration aforesaid in the record aforesaid before them remaining, between the words, Whereon the same *J.* and *M.* and the words, Say that whereas the said *J. M.* are not the words (by the said *J. W.* one of the attornies of this court in his proper person) but are these words (in their proper persons); and also they have farther certified, that in the judgment by *nihil dicit* upon the declaration aforesaid of record aforesaid before them remaining, between the words, Come as well the said *J.* and *M.* and the words, As the same *J. M.* are contained these words (in their proper persons); and they have also farther certified, that in the same judgment aforesaid, between the words, *J. M.* by, and the word aforesaid, are not contained these words (their attornies) but are contained these words (his attorney); which said writ, together with the return thereof, is filed among the records of this term of record: And hereupon the same *J.* and *M.* say, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is no error: And likewise pray that the court of the said lord the king here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid above for error assigned; and that the judgment aforesaid may be in all things affirmed: And because the court of the lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the lord the king until on the morrow of the Holy *Trinity* where-soever, &c. to hear their judgment thereon, because the court of the lord the king here thereof not yet, &c.

The return of
the cartorari,

In nullo est error.

Butler

Butler and Wilmot.

Error assigned,
that the deten-
dant was a priso-
ner in the *Fleet*,
and had not a
copy of the de-
claration deliver-
ed to him as the
late act directs.

§ & 9 W. 3. c.
26. § 13.

Nor to the turn-
key.

Nor any affidavit
made.

Afterwards, to wit, on *Wednesday* next after 14 days of *Easter* in this same term, before the lord the king at *Westminster* comes the said *Thomas* by *H. D.* his attorney and says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that after the first day of *May* 1697, to wit, on the 12th day of *July* in the year of the lord 1698, he the same *Thomas* was committed and then was a prisoner in the prison of the lord the king of the *Fleet*, and so remained until the first day of *A.* in the year of the Lord 1699, to wit, at *London* in the parish of *St. Bridget*, otherwise *Brides*, in the ward of *Farringdon Without*; and he the said *Thomas* so in the prison aforesaid being imprisoned, at any time after the said first day of *May* no declaration in the record and proceedings aforesaid mentioned was filed or entered with any prothonotary of the court of the said lord the king of common pleas, being the proper officer of the same court of common pleas for filing and entering of all declarations in the same court in such case, according to the form and effect of a certain act of parliament in such case thereof lately made and provided, against him the said *Thomas*, at the suit of the said *Ruth*, according to the form of the statute aforesaid; nor any copy of such declaration at any time after the said first day of *May* was delivered to him the said *Thomas*, or to the turnkey or porter of the said prison of the *Fleet*, nor any affidavit made of such delivery before the lord chief justice, or before any other of the justices of the common pleas by any person whomsoever, as according to the form and effect of the act aforesaid is required, nor any appearance by any attorney of the same court of common pleas aforesaid was enter'd for him the said *Thomas*, at the suit of the said *Ruth*, in the plea aforesaid; therefore the said *Thomas* says, that in that there is manifest error, and prays that the judgment aforesaid for those errors may be reversed, annulled and held as intirely void; and that the said *Ruth* to those errors may rejoin, &c.

[247] *John Wall* plaintiff; *John Town* defendant;

To the Right Honourable the Master of the Rolls :

The humble petition of Mary Wall, widow, administratrix of the goods and chattels of John Wall, her late husband deceased.

Petition for leave
to file an origi-
nal.

S*Heweth*, That your petitioner's late husband having a debt of one hundred pounds upon bond due to him from the defendant, and a warrant of attorney to confess judgment thereupon in the court of common pleas in *Hillary* term in the 8th year of her late majesty queen *Anne*, employed Mr. *James Harrington* late of *New-Inn* in the county of *Middlesex*, deceased, who was an

an attorney of the said court, to enter up a judgment pursuant to the said warrant of attorney; which judgment the said Mr Harrington entered accordingly.

That the said defendant being ever since the entry of the said judgment in mean circumstances, and not in any capacity to pay the said debt, no process was ever sued out, nor any use made of the said judgment.

That the plaintiff, your petitioner's late husband, being lately dead, and the reversion of a real estate, to which the defendant was intitled, being now liable to satisfy the said judgment, your petitioner took out letters of administration to her said husband in order to recover the said debt, and having employed an attorney to revive the said judgment, your petitioner is by him informed, that altho' the said judgment is entered on record in the said court of common pleas, yet upon search with the *custos brevium* of the said court, he cannot find any original filed to warrant the same.

That the said James Harrington, who neglected to file an original in this cause, died insolvent, whereby your petitioner, who is a poor widow, and hath very little to depend on besides the matter in question, if not relieved by your honour, inevitably must lose a just debt, and be without remedy for any satisfaction for the same.

And for that there is no writ of error brought on the said judgment, your petitioner most humbly prays your honour's order to the curfitor of *Herefordshire* for the making out of an original on the instructions hereunto annexed.

And your petitioner shall ever pray, &c.

Taylor and another and Ford.

Afterwards, to wit, on *Wednesday* next after in the same term before the lord the king at *Westminster* come the said *W. T.* and *J. B.* by *J. S.* their attorney and say, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error in this, to wit, that the judgment aforesaid was given for the said *J. F.* against the said *W. T.* and *J. B.* when by the law of *England* that judgment ought to have been given for the said *W. T.* and *J. B.* against him the said *J. F.* therefore in that there is manifest error. It is erroneous also in this, to wit, that no writ of *scire facias* in the court of the lord the king of the bench, or in the custody of the *custos brevium* of the bench aforesaid, remains filed to warrant the declaration and entry of the writ of *scire facias* in the record aforesaid above specified; therefore in that likewise there is manifest error: It is erroneous also in this, to wit, that by the record aforesaid it is mentioned, that the said *J. F.* in the record aforesaid named appeared by *W. G.* his attorney, nevertheless the same *W. G.* had no warrant of attorney of record in the court of the lord the king of the bench filed to warrant the

No *scire facias*
filed assigned for
error.

appearance of him the said *W. G.* for the said *J. F.* against the said *W. T.* and *J. B.* in the plea abovesaid; therefore in that it is manifestly erroneous: And the same *W. T.* and *J. B.* pray several writs of the lord the king, to wit, one of them to the chief justice of the lord the king of the bench, and the other of them to the *custos brevium* of the bench abovesaid, to be directed, to certify the said lord the king more fully of the truth thereof; and they are granted them, &c.

[248]

Strode and Palmer.

Error in Parliament on a judgment on a writ of *Mandamus*.

G *George, &c.* To our trusty and well beloved *Thomas lord Parker*, baron of *Macclesfield*, our chief justice assigned to hold pleas before us, greeting: Because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us by our writ of *Mandamus* in the nature of an action on the case, according to the form of the statute in this case made and provided, between *George Strode* and *John Palmer*, as it is said, a manifest error hath happened, to the great damage of the said *John* as by his complaint we have understood: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, command you, that if judgment be therein given, then the record and proceedings abovesaid with all things touching them to us in our present parliament under your seal distinctly and openly without delay you send, and this writ; that the record and proceedings abovesaid being inspected, we may farther cause to be done therein, with the assent of the lords spiritual and temporal in the same Parliament being, to correct that error what of right and according to the law and custom of *England* shall be to be done. Witness ourself at *Westminster* 4th day of *June* in the 3d year of our reign

By the lord the king.

Parnell.

The answer of Thomas lord Parker, baron of Macclesfield, the chief justice within named:

The record and proceedings of the plea whereof mention is within made, with all things touching them, to the lord the king in the present parliament with my proper hands I have produced in a certain record to this writ annexed, as I am within commanded.

*Parker,**Pleas*

Pleas before the lord the king at Westminster of Hillary term in the first year of the reign of the lord George now king of Great Britain, &c. Roll 202. among the pleas of the crown.

Somerſet, to wit. **O**therwiſe, to wit, on the 20th day of November in the firſt year of the reign of the lord George now king of Great Britain, &c. before the ſaid lord the king at *Westminster*, the ſame lord the king ſent to *John Palmer*, bailiff of his borough of *Iwelcheſter* in his county of *Somerſet*, his writ cloſe in theſe words: *George, &c.* To *John Palmer*, bailiff of our borough of *Iwelcheſter* in our county of *Somerſet*, greeting: Whereas *George Strode* into the place and office of one of the capital burgeſſes of the borough aforeſaid was duly elected and appointed, and by you into the place and office aforeſaid ought to be admitted and ſworn; and whereas the ſame *George Strode*, after ſuch his election aforeſaid, the oath in that caſe uſual before you was ready and offered himſelf to take, and by you into the place and office aforeſaid to be admitted and ſworn demanded: Nevertheless you the bailiff of the borough aforeſaid not ignorant of the premiſſes; but your duty in this behalf little regarding, the oath in that caſe uſual to the ſaid *George Strode* to adminiſter, and the ſame *George* into the place and office aforeſaid to admit and ſwear, have altogether reſuſed, and yet do reſuſe, in contempt of us, and to the great damage of the ſaid *George*; and the manifeſt prejudice of his eſtate as by his complaint we have underſtood; We therefore willing that due and ſpeedy juſtice be done in this behalf as is right command and firmly injoin you, that immediately after the receipt of this writ, the oath in that caſe uſual to the ſaid *George* you adminiſter, and the ſame *George* into the place and office aforeſaid you admit, and to the things, together with all liberties, privileges and franchises to the place and office aforeſaid belonging and appertaining, or cauſe to us to the contrary thereof ſignify, leſt in your default complaint ſhould come to us repeated; and how this our writ you ſhall have executed make known to us at *Westminster* on Monday next after the octave of *St. Hillary*, this our writ to us then remitting: And this in no wiſe omit at your peril. Witneſs *T. Parker*, knt. at *Westminster* 20th day of November in the firſt year of our reign. On which Monday next after the octave of *St. Hillary* before the lord the king at *Westminster* the ſaid *John Palmer* returns the writ aforeſaid as follows:

The answer of John Palmer bailiff of the borough of Iwelcheſter within mentioned.

I *John Palmer*, bailiff of the borough of *Iwelcheſter* within mentioned, to the moſt ſerene lord the king moſt humbly certify, that the within named *George Strode* was not elected and appointed into the place and office of one of the capital burgeſſes

of the borough aforesaid, as by that writ within is supposed; and therefore the oath in that case usual to the same *John Strode* I cannot administer, nor the same *John Strode* into the place and office aforesaid ought to admit and swear, as by that writ I am within commanded.

John Palmer.

Venire awarded-
ed returnable
Othab' pur'.

Easter.

Trinity.

Return of the
Ven^{re}.

And upon this on the same *Monday* next after the octave of *St. Hillary* before the said lord the king at *Westminster* comes as well the said *G. S.* in the writ and return aforesaid named, by *R. B.* his attorney, as the said *J. P.* in the same writ and return likewise named, by *H. M.* his attorney; and the said *G. S.* says, that he the same *G. S.* into the place and office of one of the capital burgesses of the borough aforesaid was elected and appointed, as by the writ aforesaid is supposed: And this the same *G. S.* prays may be inquired of by the country: And the said *J. P.* thereof likewise, &c. Therefore to try the issue aforesaid in form aforesaid joined, at the petition of the said *G. S.* the sheriff of the county of *Somerset* aforesaid is commanded, that he doth not omit, &c. but cause to come before the said lord the king at *Westminster* on *Saturday* next after the octave of the purification of the blessed virgin *Mary* twelve, &c. by whom &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given as well to the said *G. S.* as to the said *J. P.* On which said *Saturday* next after the octave of the purification of the blessed virgin *Mary* before the said lord the king at *Westminster* comes as well the said *G. S.* by his attorney aforesaid, as the said *J. P.* by his attorney aforesaid; and the sheriff hath not returned thereof the writ; therefore as before, to try the issue aforesaid in form aforesaid joined, at the petition of the said *G. S.* the sheriff of the county of *Somerset* aforesaid is commanded, that he doth not omit, &c. but cause to come before the said lord the king at *Westminster* on *Wednesday* next after 15 days of *Easter* 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well &c. The same day is given as well to the said *G. S.* as to the said *J. P.* &c. On which said *Wednesday* next after 15 days of *Easter* before the said lord the king at *Westminster* comes as well the said *G. S.* by his attorney aforesaid, as the said *J. P.* by his attorney aforesaid; and the sheriff hath not returned thereof the writ; therefore as oftentimes, to try the issue aforesaid in form aforesaid joined, at the petition of the said *G. S.* the sheriff of the county of *Somerset* aforesaid is commanded, that he doth not omit, &c. but cause to come before the said lord the king at *Westminster* on *Friday* next after the morrow of the holy *Trinity* 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well &c. The same day is given as well to the said *G. S.* as to the said *J. P.* &c. On which said *Friday* next after the morrow of the holy *Trinity* before the said lord the king at *Westminster* comes as well the said *G. S.* by his attorney aforesaid, as the said *J. P.* by his attorney aforesaid; and the sheriff of the county of *Somerset* aforesaid re-

turbs

turns the names of twelve jurors, of whom none, &c. Therefore the sheriff of the county of *Somerset* aforesaid is commanded, that he doth not omit, &c. but distrain them by all their lands, &c. and that of the issues, &c. so that he may have their bodies before the said lord the king at *Westminster* on day next after three weeks of *St. Michael*, or before the justices of the said lord the king assigned to take assises in the county of *Somerset* aforesaid, if they shall first come on *Monday* the second day of at *Chard* in the county aforesaid, by the form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. to recognize in form aforesaid: The same day is given as well to the said *G. S.* &c. as to the said *J. P.* &c. On which said *Wednesday* next after three weeks of *St. Michael* before the said lord the king at *Westminster* comes as well the said *G. S.* by his attorney aforesaid, as the said *J. P.* by his attorney aforesaid, and the said justices of assises before whom, &c. have sent here their record before them had in these words: Afterwards the day and place within contained before *J. Pratt*, kt. one of the justices of the lord the king assigned to hold pleas before the king himself, and *James Mountague*, kt. one of the barons of the exchequer of the said lord the king, justices of the said lord the king assigned to take assises in the county of *Somerset*, by the form of the statute, &c. comes as well the within named *G. S.* as the within written *J. P.* by their attornies within contained, &c. and the jurors of the jury, whereof mention is within made, being called, one of them, to wit, *John Silvester* comes and on that jury is sworn; and because the rest of the jurors of the same jury have not appeared, therefore others from the by-standers by the sheriff of the county aforesaid hereto elected, at the request of the said *G. S.* and by the command of the justices aforesaid, are added anew, whose names are annexed to the panel within written, according to the form of the statute in such case made and provided; and the jurors so added anew, to wit, *J. R. J. W. T. P. R. G. W. B. J. E. W. E. W. W. H. A. R. B.* and *W. W.* being called likewise come, who to say the truth of the within contained, together with the other jurors aforesaid first hereto impanelled and sworn, being elected, tried and sworn, say on their oath, that the said *G. S.* into the place and office of one of the capital burgesses of the borough of *Ivelchester* within mentioned was elected and appointed, as by the writ within specified is within supposed: Whereupon all and singular the premisses being seen, and by the court here understood, it is considered by the court here, that the said *G. S.* recover against the said *J. P.* the sum of 35*l.* for his costs and charges about his suit in this behalf expended, according to the form of the statute in such case made and provided.

Afterwards, to wit, the 8th day of *March* in the fourth year of the reign of the lord *George*, now king of *Great Britain*, &c. before the said lord the king and the peers of this realm in the present parliament at *Westminster* in the county of *Middlesex* assembled

Distringas
awarded return-
able *tres Mich.*
&c.

13 E. 1. c. 30.
12 E. 2. c. 4.
14 E. 3. c. 16.

The postea.

35 H. 3. 6.

[250]

Errors assigned.

Bill of exceptions.
Pract. Reg. 232.

33. E. 1. c. 31.

Recital of the
record and judgment.

bled comes the said *J. P.* in his proper person and says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid in form aforesaid given, was given for the said *G. S.* against the said *J. P.* when by the law of *England* that judgment ought to have been given for the said *John* against him the said *George*; therefore in that it is manifestly erroneous: And the said *J. P.* farther says, that at the assises held at *Chard* in the county of *Somerset*, to wit, the second day of in the second year of the reign of the said lord the now king aforesaid, in the record aforesaid above-mentioned, before the said *John Pratt*, kt. and *James Mountague*, kt. then justices of the said lord the king assigned to take assises in the county of *Somerset* aforesaid, &c. on the trial of the issue aforesaid in the record aforesaid above joined, certain exceptions on the behalf of the said *J. P.* by the counsel learned in the law of the said *John* were taken and made to the opinion of the said *James Mountague*, kt. then one of the justices, &c. by him then and there declared; by which the same *J. Mountague*, kt. then one of the justices, &c. declared, that a certain matter on the behalf of the said *J. P.* in the plea aforesaid, by the said counsel learned in the law of the said *John*, to the jurors aforesaid then and there offered to be given in evidence (in opposition and contradiction of certain other matter then and there on the behalf of the said *G. S.* in the same plea given in evidence) then and there on the trial of the issue aforesaid ought not to be given or admitted; And the same *J. Mountague*, kt. then one of the justices, &c. the matter offered then and there to those jurors in evidence to be given altogether refused to admit or permit; which said exceptions in a certain bill then and there were wrote; and the said *J. Mountague*, kt. then one of the justices, &c. then and there set his seal to the bill of exceptions aforesaid, according to the form of the statute in such case thereof made and provided: And the same *J. P.* produces in the court of the lord the king before the lord the king in his parliament here the bill of exceptions aforesaid, with the seal of the said *J. Mountague*, kt. then one of the justices, &c. put to the same bill: And the same *J. P.* prays the writ of the lord the king to be directed to the same *J. Mountague*, kt. to command the same *J. Mountague*, kt. to be before the lord the king in the court of his parliament at *Westminster* to confess or deny his seal, &c. and to him it is granted, &c.

Somerset, to wit. **B**E it remembered that otherwise, to wit, 20th day of *November* in the first year of the reign of the lord *George*, now king of *Great Britain*, &c. before the said lord the king at *Westminster* the same lord the king sent to *J. P.* bailiff of his borough of *Iwelchester* in his county of *Somerset*, his writ ~~in~~ these words, to wit, *George* by the grace of *God* of *Great Britain*, *France* and *Ireland* king, defender

defender of the faith, &c. To J. P. bailiff of our borough of *Iwelcheſter* in our county of *Somerſet*, greeting: Whereas G. S. into the place and office of one of the capital burgeſſes of the borough aforeſaid was duly elected and appointed, &c. (*reciting the writ and return of the iſſue and award of the venire, and continue word for word over again to*) On which ſaid Friday next after the morrow of the Holy Trinity before the ſaid lord the king at *Weſtminſter* came as well the ſaid G. S. by his attorney aforeſaid, as the ſaid J. P. by his attorney aforeſaid; and the ſheriff of the county of *Somerſet* aforeſaid return'd the names of 12 jurors, whereof none, &c. Therefore the ſheriff of the county of *Somerſet* was commanded, that he ſhould not omit, &c. but diſtrain them by all their lands, &c. and that of the iſſues, &c. ſo that he might have their bodies before the ſaid lord the king at *Weſtminſter* on day next after three weeks of St. *Michael*, or before the juſtices of the ſaid lord the king assigned to take aſſiſes in the county of *Somerſet* aforeſaid, if they ſhould firſt come on day the ſecond day of at *Chard* in the county aforeſaid, by the form of the ſtatute, &c. for want of jurors, &c. Therefore let the ſheriff have the bodies, &c. to recognize, &c. in form aforeſaid, &c. The ſame day was given as well to the ſaid G. S. &c. as to the ſaid J. P. &c. which ſaid iſſue in form aforeſaid joined between the parties aforeſaid afterwards, to wit, at the aſſiſes held here at this day, to wit, at *Chard* in the county aforeſaid, on *Monday*, to wit, the 2d day of in the 2d year of the reign of the ſaid lord the now king, before *John Pratt*, knt. one of the juſtices of the ſaid lord the king assigned to hold pleas before the king himſelf, and *James Mountague*, knt. one of the barons of the exchequer of the ſaid lord the king at *Weſtminſter*, juſtices of the ſaid lord the king assigned to take aſſiſes aforeſaid in and for the ſaid county of *Somerſet* by the form of the ſtatute, &c. came to trial. On which day here came as well the ſaid *George Strode* as the ſaid *John Palmer* by their attornies aforeſaid: And the jurors of the jury aforeſaid impanelled to try the iſſue aforeſaid being called likewise came: And on the trial of the iſſue aforeſaid ſo as aforeſaid joined, the ſaid *George Strode* by his counſel learned in the law to maintain and prove the iſſue aforeſaid on his behalf then and there gave in evidence and proved, that the right of electing capital burgeſſes of the borough aforeſaid is in the major part of the capital burgeſſes of that borough then living, before the bailiff of the ſame borough for the time being, and that he the ſame *George* into the ſame place and office of one of the capital burgeſſes of the borough aforeſaid was elected by *H. L. T. L. J. L. G. R. T. B.* and *W. C.* then being the major part of the capital burgeſſes of that borough duly aſſembled; whereupon the counſel learned in the law on the behalf of the ſaid *John Palmer*, for and on the behalf of the ſame *John*, in oppoſition and contradiction of that evidence ſo as aforeſaid given to the ſame jury, then and there offered to give and prove in evidence, that at the time when the election

[251]

The exceptions.

The notice what
plaintiff would
insist on.

of the said *George* is supposed to be made, the said *H. L.* was not a capital burghess of the borough aforesaid, and therefore had no right, authority or power, of electing a capital burghess of the borough aforesaid, and by reason thereof the vote of the said *Humphrey Lockyer* ought not to be reckoned in that election to cause the said *George Strode* to be elected one of the capital burghesses of the borough aforesaid, and insisted, that the vote of the said *H. Lockyer* in that election ought not to have been given or admitted; and the same counsel on the behalf of the said *John Palmer* then farther alledged and insisted, that they ought to be admitted to give that matter in evidence, because the said *John Palmer* had long before the said assises, to wit, on the 24th day of *March* in the year of the Lord 1715, given notice in writing to the said *George Strode*, that he the same *John Palmer* on the trial of that issue would insist on the said matter so as aforesaid offered to be given in evidence on his behalf in these words following. *Strode against Palmer. Take notice, that at the trial of this cause at the next assises for the county of Somerset the defendant will insist, that William Cleve's vote and George Hilborne's vote shall not be allowed as good votes on the plaintiff's election, William Cleve having been never well elected a capital burghess, and Mr. Hilborne not being capable to be elected, not being an inhabitant when elected. And having since been both turned out, have brought their Mandamus's to be restored, which are yet depending; and that Humphrey Lockyer's vote shall not be allowed, he not having been elected capital burghess by a majority of the burghesses; and a rule for an information nisi being now actually against him in the king's bench; and that the original corporation book now in the hands of Mr. John Lockyer, the pretended bailiff, wherein the election of William Cleve is entered, and by the said Mr. John Lockyer produced at the several trials of the said William Cleve and Mr. Hilborne, may be produced at the trial of this cause at the next assises, but these notwithstanding, the counsel learned in the law on the behalf of the said George Strode thereto objected and insisted on this, that the right, authority or power, of the said Humphrey Lockyer, to give his vote as a capital burghess of the borough aforesaid in the said election, at the time of that election was not excepted against in the said election by any person then present, but the vote of the said Humphrey was accepted as a good vote by Thomas Smith the then bailiff of the borough aforesaid in the said election, the said matter, on the behalf of the said John Palmer so as aforesaid offered to be given in evidence at the trial of that issue, ought not to be given or admitted: Nevertheless the counsel on the behalf of the said John Palmer did then at the trial of that issue insist before the said justice, that they ought to be admitted to give in evidence the said matter on the behalf of the said John so as aforesaid offered, in opposition and contradiction of the said evidence for and on the behalf of the said George Strode in form aforesaid given, and prayed the said justice that they might be admitted to give the said matter*

in evidence for and on the behalf of the said *John Palmer*; which the said justice then absolutely refused to permit or admit, and declared his opinion, that the said matter, on the behalf of the said *John Palmer* so as aforesaid offered to be given in evidence then at the trial of the issue aforesaid, ought not to be given or admitted; and thereupon the jurors aforesaid gave their verdict for the said *George Strobe* against the said *John Palmer*; whereupon the said counsel for and on the behalf of the said *John Palmer*, because the matter aforesaid in the exception offered doth not appear by the record of the verdict aforesaid, did alledge their exception aforesaid to the opinion of the said justice, and require, that the said justice would put his seal to this bill of exception, containing in itself the matter aforesaid on the behalf of the said *John Palmer* so as aforesaid offered, according to the form of the statute in such case made and provided: and thereupon the same justice at the request of the counsel of the said *John Palmer* did put his seal thereto according to the form of that statute, at *Chard* sitting the court, the said 2d day of in the 2d year of the reign of the lord the now king,

[252]

Hawley and Monger.

Afterwards, to wit, on *Tuesday* next after the octave of the purification of the blessed *Mary* then next following, before the lady the queen at *Westminster* came the said *John Hawley* being yet under the age of 21 years, to wit, of the age of 20 years, and no more, by *S. P.* his guardian duly admitted, and produced here in the court of the said lady the queen then there a certain writ of the said lady the queen to correct error prosecuted of and upon the premisses; and prayed, that the writ of error aforesaid by the court of the said lady the queen before the queen herself now here might be allowed; which said writ follows in these words, to wit, *Anne* by the grace of God of *Great Britain, France and Ireland* queen, defender of the faith, &c. To our justices assigned to hold pleas in our court before us, greeting: Because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us by bill, between *John Monger* and *John Hawley*, of a certain trespass on the case to the said *John Monger* by the said *John Hawley* done, as it is said, a manifest error hath happened, to the great damage of the said *John Hawley*, as by his complaint we have understood: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, command you, that the record and proceedings aforesaid being inspected, you farther cause to be done therein to correct that error what of right and according to the law and custom of *England* shall be to be done. Witness ourself at *Westminster* 7th day of *February* in the 11th year of our reign.

Infancy assigned for error.

The writ of error coram vobis.

Fisb.

Allowed 10th *February* in the 11th year of queen *Anne* by the court,

Afterwards,

The error,

Scire facias
awarded.

Afterwards, to wit, on *Wednesday* next after fifteen days of *Easter* then next following, before the said lady the queen at *Westminster* comes the said *John Hawley* by the said *S. P.* his guardian, and says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that he the said *John Hawley* at the time of his appearance, and of the rendition of the judgment aforesaid, was under the age of 21. years, to wit, of the age of 20 years, four months and five days, and no more, to wit, at *Westminster* aforesaid in the county aforesaid, in which case the same *John Hawley* ought to be admitted to appear in the court aforesaid to defend the suit aforesaid by his guardian, and not by attorney, nor in his proper person; therefore, because he the said *John Hawley* did not appear in the suit aforesaid by his guardian, in that there is manifest error: And this he is ready to verify: Wherefore the said *John Hawley* prays, that the judgment aforesaid for the error aforesaid may be reversed, annulled and held as intirely void; and that he to all things, which he by reason of the judgment aforesaid hath lost, may be restored: And he prays a writ of the lady the queen, to warn the said *John Monger* to be before the said lady the queen to hear the record and proceedings aforesaid; and to him it is granted, &c. whereby the sheriff of the county of *Middlesex* aforesaid is commanded, that by good and lawful men of his bailiwick he notify to the said *John Monger* that he be before the said lady the queen on _____ wheresoever, &c. to hear the record and proceedings aforesaid, if, &c. and farther to do, &c. The same day is given to the said *John Hawley*, &c.

[253]

Moore and Johnson.

Error assigned
after a verdict.
No original, and
a *certiorari* pray-
ed, and no origi-
nal certified.
18 El. c. 14.
Want of original
or warrant of
attorney after
non assumpsit for
error.

AND therefore in that there is manifest error: And the same *Edward Johnson* prays several writs of the said lord the king, one of them to be directed to *Peter King*, kt. chief justice of the lord the king of the bench aforesaid, and the other of them to be directed to *George Henry* Earl of *Litchfield*, keeper of the writs and rolls of the court of the said lord the king of the same bench, to certify the said lord the king more fully the truth thereof; and they are granted him, &c. Whereupon *George Henry* Earl of *Litchfield*, the keeper of the writs and rolls of the court of the said lord the king of the bench aforesaid is commanded, that searching the original writs of *London* aforesaid of *Trinity* term of the fifth year of the reign of the said lord the king, being in his custody of record, and what of the writ aforesaid between the parties aforesaid he shall find, to the said lord the now king without delay, wheresoever, &c. he certify, together with the writ of the said lord the king to him therefore directed; which said keeper of the writs hath thereon returned and certified to the said lord the king, that by virtue of the writ to him directed having searched the original writs of the said lord the king of the ci-
ty

ty of London of Trinity term in the fifth year of his reign above-
said in his custody filed of record, there is no original writ be-
tween the parties aforesaid in the plea aforesaid in his custody filed
of the said term, which he can certify to the said lord the king;
which said writ of *certiorari*, together with the return of the same
is filed among the records without day of that term; and as to
the return of the said writ of *certiorari* above prayed to the said
Peter King, knt, chief justice of the said lord the king of the
bench aforesaid, to certify whether any warrant of attorney be-
tween the parties aforesaid in the plea aforesaid be filed of record
or not, the same chief justice of the said lord the king hath not re-
turned thereof the writ, nor done any thing therein; and there-
upon the said *Samuel* freely here in court comes and immediately
says, there is no error either in the record and proceedings afore-
said, or in the rendition of the judgment aforesaid, and prays that
the court of the said lord the king now here may proceed to the ex-
amination as well of the record and proceedings aforesaid, as of
the matters aforesaid above for error assigned, and that the
judgment aforesaid may be in all things affirmed: But because the
court of the said lord the king now here are not yet advised to
give their judgment of and upon the premises, day therefore is
given to the parties aforesaid before the said lord the king until

This judgment
was affirmed.

wherefoever, &c. to hear their judgment thereon, be-
cause the court of the said lord the king now here thereof not yet,
&c.

Williams and Fowler.

AND the said *William Williams* by *Matthew Gaddlicott* his
attorney comes and says, that in the record and proceedings
aforesaid, as also in the rendition of the judgment aforesaid, there
is manifest error, in this, because by the record aforesaid it ap-
pears that the judgment aforesaid was given for the said *William
Fowler* against him the said *William Williams*, when by the law
of the land that judgment ought to have been given for the said
W. Williams against the said *W. Fowler*: There is error also in
this, that where by the record aforesaid it appears that the judg-
ment aforesaid was given, that the said *W. Fowler* might go there-
of without day, and that the said *W. Fowler* might recover a-
gainst the said *W. Williams* 16 l. 10 s. to the same *W. Fowler*, ac-
cording to the form of the statute in such case made and provided,
adjudged for his costs and charges by him in that behalf sustained:
Nevertheless the same judgment ought to have been given, that
the said *W. Williams* should recover against the said *W. Fowler*
his damages by reason of the non-performance of the promises and
assumptions aforesaid of the said *William Norris* the intestate
aforesaid of the said *W. Fowler*, as also his costs and charges
which he the said *W. Williams* had sustained in and about that suit
of the goods and chattels of the said *W. Norris* in the hands of the
said *W. Fowler* to be administered, if he had so much in the hands
of

General errors
assigned by the
plaintiff on a
judgment for the
defendant in the
action.

23 H. 8. c. 15,
8 El. c. 2.

of the said *W. Fowler* to be administered; and if he had not, then those costs and charges to be levied of the proper goods and chattels of the said *W. Fowler*; therefore in that there is manifest error: And the same *W. Williams* prays that for those errors and other errors in the record and proceedings aforesaid appearing, the judgment aforesaid may be reversed, annulled and held as void; and that he the said *W. Williams* to all things which by reason of that judgment he hath lost may be restored; and that such judgment may be given in this court for the said *W. Williams* as by the law of the land of this kingdom ought to have been given for the same *W. Williams* against the said *W. Fowler* in the said court of the said lord the king of the bench; and that the said *W. Fowler* to those errors may rejoin, &c.

Edw. Whitaker.

[254]

Gratton and another
and
Leeds. } *Error in ejectment.*

Assignment of error in a record out of Ireland where the judgment in C. B. was affirmed by the king's court there.

A Fterwards, to wit, *Monday* next after three weeks of *St. Michael* in that same term, before the lord the king at *Westminster* in the county of *Middlesex* the said *Richard Power* and *Richard Gratton* by *John Allen* their attorney come and say, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid in the record aforesaid mentioned, there is manifest error, in this, to wit, that the declaration aforesaid, and the matter in the same contained, are not sufficient in law for him the said *Theodore Leeds* to maintain his action aforesaid thereof against them the said *R. Power* and *R. Gratton* had; and therefore in that there is manifest error: There is error also in this, that by the record aforesaid it appears, that the judgment aforesaid by the said court of the said lord the king of the common bench in the kingdom of *Ireland* in form aforesaid given, was given for the said *Theodore* against them the said *R. Power* and *R. Gratton*, when by the law of the land of the said kingdom of *Ireland* that judgment ought to have been given for the said *R. Power* and *R. Gratton* against the said *Theodore*; Therefore in that there is manifest error: There is error also in this, that by the record and proceedings aforesaid in the rendition of the said judgment of affirmance of the said judgment above first by the said court of common bench in the kingdom of *Ireland* given, it appears that that judgment by the said court of the said lord the king before the King himself in *Ireland* was affirmed, when that judgment by the same court ought to have been reversed, and so there is manifest error in the rendition of the said judgment of affirmance of the said judgment in the said court of common bench so as aforesaid first given; therefore in that there is manifest error: And they pray that as well the said judgment of affirmance aforesaid, as the said judgment

ment by the said court of common bench as aforesaid given, for the error aforesaid and others being in the record and proceedings aforesaid, may be reversed, annulled and held as intirely void; and that they may be restored to all things which they have lost by reason of the said several judgments.

C. Wearg.

Phelipps and Smith.

G Eorge by the grace of God of Great Britain, France and Ireland king, defender of the faith, &c. To our trusty and well beloved John Pratt, knt. our chief justice assigned to hold pleas in our court before us, greeting: Whereas in the record and proceedings, as also in the rendition of the judgment of a plea which was in our court before us by bill between Edward Phelipps, esq; and Thomas Smith, gent. for a certain debt which the said Edward demanded of the said Thomas, which said record and proceedings, by reason of error happening, we caused to be brought before the justices of the common bench and the barons of our exchequer into our exchequer chamber aforesaid, and the judgment thereof is affirmed, as it is said, manifest error hath happened, to the great damage of the said Thomas, as by his complaint we have understood: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment thereof be given and affirmed, then the record and proceedings, with all things touching them, to us in our present Parliament under your seal you distinctly and openly without delay send, and this writ, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein, with the assent of the Lords Spiritual and Temporal being in the same Parliament, to correct that error, what of right and according to the law and custom of England shall be to be done. Witness ourself at Westminster 12th day of December in the fifth year of our reign.

Writ of error returnable in parliament to reverse the affirmance of a judgment in the exchequer chamber.

By the lord the king.

Parnel.

The answer of John Pratt, knt. the chief justice within named:

The record and proceedings of the plea whereof mention is within made, with all things touching them, to the lord the king in the present Parliament with my proper hands I have produced in a certain record to this writ annexed, as I am within commanded.

The return.

John Pratt.

Pleas

Pleas before the lord the king at Westminster of Trinity term in the second year of the reign of the lord George now king of Great Britain, &c. Roll 460.

Warrant of Attorney for the plaintiff.

Somerset, to wit. **E** *Edward Phelipps, esq;* puts in his place *Henry Gandy* his attorney against *Thomas Smith* bailiff of the borough of *Iwelcheſter*, in a plea of debt.

The like for the defendant.

Somerset, to wit. **T** *Thomas Smith* puts in his place *James Long* his attorney at the ſuit of *Edward Phelipps, esq;* in a plea of debt.

Phelipps, esq; and Smith.

Error in the exchequer on a judgment in debt on 7 & 8 W. 3. c. 25. §. 6. against the returning officer for refusing a copy of the poll.

Somerset, to wit. **B**E it remembered, that otherwise, to wit, in *Eaſter* term in the 1ſt year of the reign of the lord the now king, before the lord the king at *Westminster* came *Edward Phelipps, esq;* by *Henry Gandy* his attorney, and produced here in the court of the ſaid lord the king then there his certain bill againſt *Thomas Smith*, bailiff of the borough of *Iwelcheſter* in the county aforeſaid, in the cuſtody of the marſhal, &c. in a plea of debt: And there are pledges to proſecute; to wit, *John Doe* and *Richard Roe*: Which ſaid bill follows in theſe words, to wit, *Somerset; to wit, Edward Phelipps, esq;* complains of *Thomas Smith*, bailiff of the borough of *Iwelcheſter* in the county aforeſaid, being in the cuſtody of the marſhal of the *Marſhalſey* of the lord the king before the king himſelf, in a plea that he render to him 500*l.* which he owes him and unjuſtly detains, for this, to wit, that whereas the town of *Iwelcheſter* aforeſaid in the county aforeſaid is an antient borough, and that two burgeſſes of the ſame borough to come to every parliament of the lord the king and his predeceſſors kings and queens of *England* from time immemorial have been elected, and have been accuſtomed to be elected by the burgeſſes and inhabitants of the ſame borough in that behalf having votes: And whereas a certain writ of the lord the now king out of his chancery at *Westminster* in the county of *Middleſex* 17th day of *January* in the 1ſt of year his reign, bearing date the ſame day and year, did iſſue, directed to the ſheriff of *Somerset* aforeſaid; by which ſaid writ, reciting, becauſe the ſame lord the king with the advice and aſſent of his council for certain great and urgent affairs concerning the king himſelf, the eſtate and defence of his kingdom of *Great Britain* and of the church, had ordained his certain parliament to be held at his city of *Westminster* on the 17th day of *March* then next following, and there to conſult and treat with the prelates, nobles and peers of his ſaid kingdom, the ſame lord the king commanded and firmly enjoined the then ſheriff of *Somerset*, that proclamation being made in his next county-court to be held after the receipt of that writ of the day and place aforeſaid,

aforesaid, two knights girded with swords the more fit and discreet of the county aforesaid, and of every city of that county two citizens, and of every borough two burgesles of the more discreet and sufficient, by those who should be at such proclamation, according to the form of the statute thereof made and provided, to be elected, and the names of the same knights, citizens and burgesles so to be elected, in certain indentures between the said sheriff and those who should be at such election thereof to be made, altho' such elected should be present or absent, to be inserted, and them at the day and place aforesaid to come should cause, so that the same knights full and sufficient power for themselves and the commonalty of that county, and the said citizens and burgesles for themselves and the commonalty of the cities and boroughs aforesaid, severally from them might have to do and consent to those things which then and there by the common council of his said kingdom with the favour of God should happen to be ordained on the affairs aforesaid, lest by reason of a hasty election of the knights, citizens or burgesles aforesaid, the said affairs should in any wise remain undone; but the said lord the king commanded, that he the said sheriff or any other sheriff of his said kingdom should not in any wise be elected; and that the said election made in his full county he should distinctly and openly, under his seal and the seal of those who should be at that election, without delay certify to the said lord the king in his chancery at the said day and place, sending to the same lord the king the other part of the indenture aforesaid sewed to that writ, as by the same writ now remaining in the court of chancery of the said lord the king at *Westminster* aforesaid more fully appears: Which said writ afterwards, to wit, the 26th day of *January* in the 1st year of the reign of the said lord the now king abovesaid, at *Ivelchester* aforesaid in the said county of *Somerset*, was delivered to one *John Trevillian*, esq; being then sheriff of the same county of *Somerset*, to be executed in form of law; by virtue of which said writ the same sheriff afterwards, to wit, the said 26th day of *January* in the 1st year abovesaid, there made his certain precept in writing, sealed with the seal of his office of sheriff, directed to the bailiff of the said borough of *Ivelchester* in the county aforesaid, of and for the election within that borough of two burgesles of the same borough according to the form and effect of the writ aforesaid; which said precept afterwards, to wit, on the said 26th day of *January* in the 1st year abovesaid at *Ivelchester* aforesaid, was delivered to the said *Thomas Smith*, being then bailiff of the borough of *Ivelchester* aforesaid, (to which said bailiff the execution of the said precept belonged) in form of law to be executed; by virtue of which said precept afterwards, to wit, the 2d day of *February* in the 1st year of the reign of the lord the now king, they proceeded to the election of two burgesles for the same borough of *Ivelchester* to come to the same parliament, according to the form and effect of the writ aforesaid: And thereupon the same

Edward

[256]

Delivered to the sheriff, who made his precept to the bailiff for the electing burgesles;

The candidates. *Edward Phelipps* and *James Bateman*, knt. *William Bellamy*, esq; and *John Hopkins*, esq; were and stood candidates at that election, that out of them two might be chosen to be burgessees of parliament for the said borough, and very many burgessees of that borough were present at that election, and having votes in that behalf, their votes for the same *Edward Phelipps* to be one of the said two burgessees for the said borough, and divers burgessees of the said borough at that election being likewise present, their votes for the said *James Bateman* to be another of the said two burgessees of parliament for that borough, and divers other burgessees of that borough being likewise present, their votes for the said *William Bellamy* and *John Hopkins* to be two of the burgessees of parliament for that borough, then and there gave and voted; so that for the manifestation of that election a poll of those votes of such election being by some of them required and demanded, was then and there in writing had and taken before the said *Thomas Smith*, then being as aforesaid bailiff of that borough; and he the said *Thomas Smith* the same poll then and there received and had; and after the poll of the votes of, in and for that election taken, had and ended, to wit, on the 10th of *February*, in the 1st year aforesaid, at *Iwelchester* aforesaid, the same *Edward Phelipps* desired the same *Thomas Smith*, then as aforesaid being bailiff of the borough aforesaid, to deliver to the same *Edward Phelipps* a copy of the poll of the votes at the same election taken; and then and there was ready and offered to pay to the said *Thomas Smith* any reasonable sum of money for the writing thereof that he therefore should require: Nevertheless the said *Thomas*, being as aforesaid bailiff of the borough aforesaid, (to which said bailiff the execution of the precept aforesaid for the election of the burgessees aforesaid did then belong) the duty of his office of bailiff of the same borough in this behalf, and the statute in such case made and provided, not considering, nor the penalty in that statute contained in any wise fearing, did not then or afterwards deliver to the same *Edward Phelipps* a copy of the poll of the voters of the election aforesaid for the borough aforesaid, but to deliver him the same then and afterwards voluntarily absolutely refused, against the form of the statute in such case made and provided; whereby an action accrued to the same *Edward Phelipps* to demand and have of the said *Thomas Smith* the said 500*l.* Nevertheless the said *Thomas Smith*, altho' often required, the said 500*l.* to the same *Edward Phelipps* hath not yet paid, but hath hitherto denied, and yet doth deny to pay him the same; whereby he says that he is prejudiced, and hath damage to the value of 40*l.* And therefore he produces the suit, &c.

Imparience. And now on this day, to wit, *Friday* next after the morrow of the Holy *Trinity*, until which day the said *Thomas* had leave to imparl to the bill aforesaid and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Edward* by his attorney aforesaid, as the said *Thomas* by *James Long* his attorney;

attorney: And the same *Thomas* defends the force and injury when, &c. and says that he doth not owe to the said *Edward* the said 500 l. or any penny thereof; in manner and form as the said *Edward* hath above against him declared: And of this he puts himself on the country: And the said *Edward* likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the Holy Trinity; and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; and the sheriff hath not returned thereof the writ: Therefore as before let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after 15 days of *St. Martin*; and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; and the sheriff hath not returned thereof the writ: Therefore as before let a jury thereon come before the lord the king at *Westminster* on *Tuesday* next after the octave of the blessed virgin *Mary*; and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process thereof between the parties aforesaid in the plea aforesaid being continued, by the jury thereof between them being respited before the king at *Westminster* until *Wednesday* next after 15 days of *Easter* then next following, unless the justices of the lord the king assigned to take assises in the county aforesaid shall first come on *Monday* the 18th day of *March* at the castle of *Taunton* in the county aforesaid, by the form of the statute, &c. for want of jurors, &c. On which *Wednesday* next after fifteen days of *Easter*, before the lord the king at *Westminster* comes the said *Edward* by his attorney aforesaid; and the said justices of the said lord the king of assise before whom, &c. have sent here their record before them had in these words: Afterwards the day and year within contained, before *Robert Price*, esq; one of the barons of the exchequer of the lord the king, and *Robert Eyre*, esq; one of the justices of the lord the king assigned to hold pleas before the king himself, justices of the said lord the king assigned to take assises in the county of *Somerset* by the form of the statute, &c. comes as well the within named *Edward Philipps*, esq; as the within written *Thomas Smith*, by their attornies within contained: And the jurors of the jury whereof mention is within made being called, some of them, to wit, *Richard Chaffey* and *Richard Chin*, come, and on that jury are sworn, and because the rest of the jurors of that jury have not appeared, therefore others, of the by-standers by the sheriff of the county aforesaid hereto elected, at the request of the said *Edward Philipps*, and by the command of the justices aforesaid, are added a-new, whose names are annexed to the panel within written according to the form of the

Nil debet.

Venire awarded.

Not returned.

Another awarded.

[257]

The jury continued to the assises.

13 E. 1. c. 30.

12 E. 2. c. 4.

14 E. 3. c. 16.

The postea.

Tales:

35 H. 8. c. 6.

Judgment.

statute in such case made and provided; and the jurors so added a-new, to wit, *James Slape, William Exton, John Stone, James Chaffey, Lawrence Dare, Hugh Perry, Nicholas Hartnell, Richard Locke, John Dare and Henry Thorne*, being called likewise come, who to say the truth of the within contained, together with the jurors aforesaid hereto first impanelled and sworn, being elected, tried and sworn, say on their oath, that the said *Thomas Smith* owes the said *Edward Phelipps* the within mentioned 500 *l.* and every penny thereof, in manner and form as the said *Edward Phelipps* hath within against him declared; and they assess the damage of the said *Edward Phelipps* by reason of the detention of the debt within written, besides his costs and charges by him about his suit in this behalf expended, to 2 *d.* and for those costs and charges to 40 *s.* Therefore it is considered, that the said *Edward Phelipps* recover against the said *Thomas Smith* his debt aforesaid, and the damages aforesaid by the jury aforesaid in form aforesaid assessed, as also 18 *l.* for his costs and charges aforesaid to the same *Edward Phelipps* by the court of the said lord the king now here with his assent of increase adjudged, which said damages in the whole amount to 20 *l.* and 2 *d.* And the said *Thomas Smith* in mercy, &c.

Phelipps and Smith.

Error assigned
in the exchequer
chamber.

No warrant of
attorney.

No venire.

No distringas.

No bill filed.

General error.

AND the said *Thomas* by *Daniel Ruffel* his attorney comes here into court and says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid there is manifest error, in this, to wit, that by the record and proceedings aforesaid it appears, that the said *Edward* by *Henry Gandy* his attorney appeared, when in truth and in fact the same *Henry Gandy* had no warrant of record filed to appear for the same *Edward* against the said *Thomas Smith* bailiff of the borough of *Iwelchefer*, in the plea aforesaid: And the same *Thomas* farther says, that there is error in this, to wit, that no such writ to cause to come 12, &c. between the parties aforesaid in the plea aforesaid, in the same record mentioned, in the said court of the lord the king before the king himself is filed of record, as by that record above is supposed: There is error also in this, to wit, that no such writ to distrain the jurors between the parties aforesaid in the plea aforesaid, in the same record mentioned, in the said court of the said lord the king before the king himself is filed of record: There is error also in this, to wit, that there is no bill between the parties aforesaid in the same record mentioned in the same court of the lord the king before the king himself filed, to warrant the declaration and judgment aforesaid: And the same *Thomas* farther says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid in form aforesaid given, was given

for the said *Edward* against the said *Thomas*, when by the law of the land of this kingdom; that judgment ought to have been given for the said *Thomas* against him the said *Edward*; therefore in that likewise there is manifest error: And he prays several writs of *certiorari*, &c. and they are granted him, &c. *George* by the grace of God, &c. To our trusty and well beloved *Thomas* lord *Parker*, baron of *Macclesfield*, our chief justice assigned to hold pleas in our court before us, greeting: Whereas in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us by bill between *Edward Phelipps*, esq; and *Thomas Smith*, bailiff of the borough of *Ivelcheffer* in the county of *Somerset*, of a certain debt which the same *Edward* demanded of the said *Thomas*, as it is said, a manifest error hath happened, to the great damage of him the said *Thomas*, as by his complaint we have understood, the record and proceedings of which said judgment before our justices of the common bench and the barons of our exchequer who are of the degree of the coif, to correct the errors in the same, according to the form of the statute of the 27th year of the reign of the lady *Elizabeth*, late queen of *England*, thereof made and provided, into our court of our exchequer chamber aforesaid we have caused to be brought; and the said *Thomas* in the same court of exchequer chamber appearing hath said, that where by the record aforesaid before the same justices and barons transmitted it appears, that the said *Edward* constituted one *Henry Gandy* his attorney against the said *Thomas* of *Easter* term in the 1st year of our reign, yet the said *Henry Gandy* had no warrant of attorney of record filed to appear for the same *Edward* in the plea aforesaid; and where by the record aforesaid so as aforesaid transmitted it appears, that the said *Edward* in the same *Easter* term in the first year of our reign aforesaid exhibited into our said court his bill against the said *Thomas* in the plea aforesaid, yet there is not any such bill of record filed with continuances thereof to warrant the declaration and judgment aforesaid; and the said *Thomas* farther said, that no such writ to cause to come 12, &c. between the parties aforesaid in the plea aforesaid in our said court before us is filed of record, as by the record aforesaid above is supposed; and also that no such writ to distrain the jurors between the parties aforesaid in the plea aforesaid in our said court before us of record is filed, as by the record aforesaid above is supposed; and we being willing to be certified of the premises aforesaid in this behalf, command you, that searching the rolls and other *memorandums* of the warrants of attorney of the county of *Somerset* of the said *Easter* term in the first year of our reign aforesaid, and of *Trinity* term in the 2d year of our reign, remaining in your custody of record; and also searching the files of bills of the same *Easter* term in the 1st year aforesaid, also remaining in your custody of record; and also searching our writs of *venire facias* 12, &c. to the sheriff of the county of *Somerset* directed, in our same court of *Trinity* term in the 2d year of our reign, and of

[258]

Certiorari to the chief justice of the K. B. to certify the warrant of attorney, *venire, distringas* and bill.
Salk. 782.

Michaelmas term and *Hillary* term in the 3d year of our reign, being in your custody of record; and also searching our writs of *distingas juratores* to the sheriff of our county of *Somerset* directed, in our same court of *Easter* term in the 3d year above-said, in your custody of record likewise being, what of the warrant of attorney afore-said, and of the bill and continuances thereon indorsed, and also what of the said several writs between the parties afore-said in the plea afore-said you shall find, as fully and intirely as they remain in your custody, to our justices of the common bench and the barons of our exchequer without delay into our court of exchequer chamber afore-said you certify, together with this writ. Witness *Peter King*, knt. at *Westminster* 11th day of *February* in the 4th year of our reign.

The answer of Thomas lord Parker, baron of Macclesfield, the chief justice within written:

Searching the rolls and other *memorandums* of the warrants of attorney of the county of *Somerset* of *Easter* term in the first year of the reign of the lord the king within written, and of *Trinity* term in the second year of the reign of the said lord the king, in my custody filed of record, I find no warrant of attorney of the same term in the first year above-said, for the within written *Edward* in the plea within mentioned filed of record: but I find a certain warrant of attorney for the same *Edward* of *Trinity* term in the 2d year above-said in my custody filed of record; searching also the files of bills of the same *Easter* term in the 1st year above-said, in my custody of record filed, I find there a certain bill between the parties within mentioned in the plea afore-said of the same term without any continuance; and also searching the writs of *venire facias* 12, &c. of *Trinity* term in the 2d year within written, and of *Michaelmas* term and *Hillary* term in the 3d year within written, in my custody of record filed, I find no writs of *venire facias* 12, &c. of *Trinity* term in the 2d year within written, nor of *Michaelmas* term in the 3d year above-said, between the parties afore-said in the plea afore-said; but I find a certain writ of *venire facias* 12, &c. to the sheriff of the county of *Somerset* directed, between the parties afore-said in the plea afore-said of *Hillary* term in the 3d year within written in my custody of record filed; searching also the writs of *distingas juratores* of *Easter* term in the 3d year within written, in my custody filed of record, I there find a certain writ of *distingas juratores*, between the parties afore-said in the plea afore-said of the same term, in my custody filed of record; the tenor of which said warrant of attorney, bill and writs afore-said, follow in a certain schedule to this writ annexed: And this I certify to the justices of the said lord the king of the common bench and the barons of the exchequer within written, as I am within commanded.

Parker.

Somerset,

Somerset, to wit. **E** *Dward Phelipps*, esq; complains of *Thomas Smith*, bailiff of the burrough of *Iwelchester* in the county aforesaid, in the custody of the marshal, &c. (so recite the declaration to) whereby he says that he is prejudiced, and hath damage to the value of 40*l*. And therefore he produces the suit, &c. The bill certified.

Gandy for the plaintiff, { Pledges to prosecute, } *John Doe*,
Long for the defendant. { *Richard Roe*.

Hill. 3d of king Geo.

G *Eorge*, &c. To the sheriff of *Somerset*, greeting: We command you that you cause to come before us at *Westminster* on *Tuesday* next after the octave of the purification of the blessed virgin *Mary*, twelve free and lawful men of the neighbourhood of *Iwelchester*, each of ten pounds of land, (and so on to) because between whom the dispute is, have put themselves on that jury, and have there the names of the jurors and this writ. Witness *Thomas* lord *Parker*, baron of *Macclesfield*, at *Westminster* 23d day of *January* in the third year of our reign. And the venire.

Holt. *Ventris*.

The execution of this writ appears in a certain panel to this writ annexed, Ret'.

Joseph Browne, esq; sheriff.

Somerset, to wit. **T** *HE* names of the jurors between *Edward Phelipps*, esq; plaintiff, and *Thomas Smith* defendant, in a plea of debt.

Thomas Cole of *Kingstone*, *William Knight* of the same, *James Hine* of *Bishopshull*, (and so on to the end of the panel to) of the jurors aforesaid by himself severally is attached by pledges, *John Doe* and *Richard Roe*. And panel.

James Browne, esq; sheriff.

Hill. 3d of king Geo.

G *Eorge*, &c. *Somerset*, greeting: We command you that you distrain *Thomas Cole* of *Kingstone*, *William Knight* of the same, (and so on to) come to make that jury between the parties aforesaid in the plea aforesaid, and to hear thereof their judgment for the former default, and have there then this writ. Witness *Thomas* lord *Parker*, baron of *Macclesfield*, at *Westminster* 12th day of *February* in the third year of our reign. And distringat.

Holt. *Ventris*.

Ret'.

The execution of this writ appears in a certain panel to this writ annexed,

Joseph Browne, esq; sheriff.

[260]
And panel.

Somerset, to wit. **T**HE names of the jurors between *Edward Phelipps, esq; plaintiff,* and *Thomas Smith,* defendant, in a plea of debt.

Thomas Cole of Kingstone.

William Knight of the same, (and so on to) each of the jurors aforesaid by himself severally is attached by pledges, *John Doe* and *Richard Roe.*

Joseph Browne, esq; sheriff.

The names of the jurors added anew.

*James Slape,
William Eyton,
John Stone,
James Chaffey,*

*Lawrence Dare,
Hugh Perry,
Nicholas Hartnell,
Richard Locke, sworn.*

Trin. 2d of king Geo.

And warrant of
attorney.

Somerset, to wit. **E**dward Phelipps, esq; puts in his place *Henry Gandy* his attorney against *Thomas Smith*, bailiff of the borough of *Iwelchester*, in a plea of debt.

Phelipps and Smith.

Rule granted by
the K. B. to a-
mend the record
in what had
been assigned for
error.

Monday in the morrow of *All Souls* is farther given to assign error to shew cause why the record and proceedings here in court between the parties may not be amended, in this, to wit, first, by inserting the letter (r) in the word *buough* in the warrant of attorney of the said plaintiff, and the word *buough* for *brough*; secondly, by inserting the word (sheriff) before the word *Somerset* in *breve distringas*; thirdly, by changing the *teste* of the writ of *venire facias*, so that the *teste* be made 28th day of *November* for 23d day of *January*, or that a continuance of the writ of *venire facias* may be entred on the record from *Wednesday* next after 15 days of *St. Martin* to *Wednesday* next after the octave of *St. Hillary*; fourthly, by entring several continuances on the bill of the said plaintiff *Phelipps* in this cause from *Easter* term in the first year of the reign of the lord the now king, of which said term that bill was filed, until *Friday* next after the morrow of the *Holy Trinity* in the second year of the reign of the said lord the now king, and that the record of the judgment aforesaid be amended by the entry on that bill, *On the motion of Mr. serjeant Comyns.*

By the court.

George

Gorge, &c. To our trusty and well beloved *John Pratt*,
 kn^t. our chief justice assigned to hold pleas in our court be-
 fore us, greeting: As in the record and proceedings, and also in
 the rendition of the judgment of imparlance which was in our
 court before us by bill between *Edward Phelipps*, esq; and
Thomas Smith, bailiff of the borough of *Iwelchester* in the county
 of *Somerset*, for a certain debt which the said *Edward* demanded
 of the said *Thomas*, a manifest error hath happened, to the great
 loss of the said *Thomas*, as by his complaint we have understood;
 the record and proceedings of which said judgment we have caused
 to be brought before our justices of the common bench and our
 barons of the exchequer who are of the degree of the coif, to
 correct the errors in the same, according to the form of the
 statute of the 27th year of the reign of the lady *Elizabeth*, late
 queen of *England*, thereof made and provided, into the court of
 our said exchequer chamber; and the said *Thomas* in our same
 court of exchequer chamber appearing hath alledged, that by the
 record aforesaid before the same justices and barons sent it ap-
 pears, that the said *Edward* constituted one *Henry Gandy* his
 attorney against the said *Thomas* in *Easter* term in the first year
 of our reign; yet the said *Henry Gandy* had no warrant of at-
 torney filed of record to appear for the same *Edward* in the plea
 aforesaid; and where by the record aforesaid so as aforesaid sent
 it appears, that the said *Edward* in the same *Easter* term in the
 first year of our reign aforesaid exhibited into our said court his
 bill against the said *Thomas* in the plea aforesaid, yet there is not
 any such bill filed of record with continuances thereon to
 warrant the declaration and judgment aforesaid; and the said
Thomas hath farther alledged, that no such writ of *venire facias*
 twelve, &c. between the parties aforesaid in the plea aforesaid in
 our said court before us is filed of record, as by that record is
 supposed; and also that no such writ of *distingas juratores* be-
 tween the parties aforesaid in the plea aforesaid in our said court
 before us is filed of record, as by that record above is supposed;
 We willing to be certified of the premisses aforesaid command
 you, that the rolls and other memorandums of the warrants of
 attorney of the county of *Somerset* of the said *Easter* term in the
 first year of our reign aforesaid, and of *Trinity* term in the second
 year of our reign, remaining in your custody of record, being
 searched, and also the files of bills of the same *Easter* term in the
 first year aforesaid, remaining likewise in your custody of re-
 cord, being searched, and also our writs of *venire facias* 12, &c.
 to the sheriff of the county of *Somerset* directed, in our same court
 of *Trinity* term in the second year of our reign, and of *Michael-*
mas term and *Hillary* term in the third year of our reign, being
 in your custody of record, being searched, and also our writs of
distingas jur to the sheriff of the county of *Somerset* directed,
 in the same court of *Easter* term in the third year of our reign
 aforesaid, being likewise in your custody of record, being

After these a-
 mendments
 were made, the
 defendant in er-
 ror sued out the
certiorari to sa-
 tisfy the justices
 and barons the
 record was not
 erroneous.

27 El. c. 8.

[261]

searched, what of the warrant of attorney aforesaid, and of the bill and continuances thereon indorsed, and also what of the said several writs between the parties aforesaid in the plea aforesaid you shall find, as fully and intirely as they remain in your custody, to our said justices of the common bench and the barons of our exchequer without delay into our court of exchequer chamber aforesaid you certify, together with this writ, *Witness, &c.*

The answer of John Pratt, knt. the chief justice within written.

The return.

The rolls and other memorandums of the warrants of attorney of the county of *Somerset* of *Easter* term in the first year of the reign of the lord the king within written, and of *Trinity* term in the second year of the reign of the said lord the king, in my custody filed of record, being searched, I find no warrant of attorney of the same term in the first year aforesaid for the within written *Edward* in the plea within mentioned filed of record; but I find a certain warrant of attorney for the same *Edward* of *Trinity* term in the second year aforesaid in the plea within mentioned in my custody filed of record; the files also of the bills of the same *Easter* term in the first year aforesaid in my custody filed of record being searched, I there find a certain bill between the parties within mentioned in the plea aforesaid of the same *Easter* term, with a continuance thereon from the said *Easter* term to the said *Trinity* term in the second year of the reign of the said lord the now king, the writs also of *venire facias* 12, &c. of *Trinity* term in the second year of the king aforesaid, and of *Michaelmas* term and *Hillary* term in the third year aforesaid, in my custody filed of record, being searched, I find no writs of *venire facias* 12 &c. to the sheriff of the county of *Somerset* directed, between the parties aforesaid in the plea aforesaid of the same *Trinity* term in the second year aforesaid, nor of the same *Michaelmas* term in the third year within written, in my custody filed of record; but I find a certain writ of *venire facias* 12, &c. to the sheriff of the county of *Somerset* directed, between the parties aforesaid in the plea aforesaid, of the said *Hillary* term in the third year within written, in my custody filed of record; the writs also of *distingas jur'* of *Easter* term in the third year within written, in my custody filed of record, being searched, I there find a certain writ of *distingas jur'* between the parties aforesaid in the plea aforesaid of the same term in my custody filed of record; the tenor of which said warrant of attorney, bill and writs aforesaid, follows in a certain schedule to this writ annexed: And this I certify to the justices of the said lord the king of the bench and the barons of the exchequer within written, as I am within commanded.

J Pratt.

The continuation of the bill.

The defendant in this bill within contained prays a day of imparlance thereto; and it is granted him, &c. And thereupon a day thereof is given to the parties within written before the lord the king

king at *Westminster* until *Friday* next after the morrow of the Holy Trinity, to wit, to the said defendant to imparl to the bill aforesaid, and then to answer, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies within contained, and the said defendant prays a farther day of imparlance thereto; and it is granted him, &c. And hereupon a farther day thereof is given to the parties aforesaid before the lord the king at *Westminster* until *Monday* next after three weeks of St. *Michael*, to wit, to the said defendant to imparl to the bill aforesaid, and then to answer, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies within contained; and the said defendant prays a farther day of imparlance thereto; and it is granted him, &c. And hereupon a farther day thereof is given to the parties aforesaid before the lord the king at *Westminster* until *Monday* next after the octave of St. *Hillary*, to wit, to the said defendant to imparl to the bill aforesaid, and then to answer, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies within contained; and the said defendant prays a farther day of imparlance thereto; and it is granted him, &c. And hereupon a farther day thereof is given to the parties aforesaid before the lord the king at *Westminster* until *Wednesday* next after 15 days of *Easter*, to wit, to the said defendant to imparl to the bill aforesaid, and then to answer, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies within contained; and the said defendant prays a farther day of imparlance thereto; and it is granted him, &c. And hereupon a farther day thereof is given to the parties aforesaid before the lord the king at *Westminster* until *Friday* next after the morrow of the Holy Trinity, to wit, to the said defendant to imparl to the bill aforesaid, and then to answer, &c.

[262]

Hill. 3d of king Geo.

George, &c. To the sheriff of *Somerset*, greeting: We command you that you cause to come before us at *Westminster* on *Tuesday* next after the octave of the purification of the blessed virgin *Mary* twelve free and lawful men of the neighbourhood of *Iwelcheſter* each of whom hath ten pounds of land, tene-ments or rent by the year at least, by whom the truth of the matter may be the better known, and who are in no wise related to *Edward Phelipps*, esq; the plaintiff, nor to *Thomas Smith*, bailiff of the borough of *Iwelcheſter*, to make a certain jury of the country between the parties aforesaid in a plea of debt, because as well the same *Edward* as the said *Thomas*, between whom the dispute is, have put themselves on that jury; and have there the names of the jurors and this writ, Witness, &c.

The venire,

Holt. Ventris.

The execution of this writ appears in a certain panel hereto annexed,

Joseph Brown, esq; sheriff,

The return of the venire.

The

The names of the jurors between *Edward Phelipps*, esq; plaintiff, and *Thomas Smith* defendant, in a plea of debt. *Then follows the panel to the venire as before.*

Then the distringas and panel in hæc verba as amended.

Then the defendant in error pleaded, In nullo est erratum, as follows.

AND the said *Edward Phelipps* by *John Allen* his attorney comes and says, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid: and prays that the court of the lord the king here may proceed to the examination as well of the record and proceedings aforesaid as of the matters aforesaid for error assigned, and that the judgment aforesaid may be in all things affirmed: But because the court of the said lord the king here will advise themselves of and upon the premisses before they give judgment thereon, day therefore is given to the parties aforesaid until *Wednesday* 11th day of *February* next to hear their judgment thereon, because the court of the lord the king here thereof not yet, &c.

And thereupon the judgment was affirmed.

The entry of the record transmitted into the exchequer chamber.

Errors assigned.

In nullo est erratum joined.

[263]

AFTERWARDS, to wit, on *Saturday* the 11th day of *May* in the third year of the reign of the said lord the king, the transcript of the record and proceedings aforesaid between the parties aforesaid in the plea aforesaid, with all things touching them, by pretence of a certain writ of the said lord to correct error, by the said *Thomas Smith* in the premisses before the justices of the said lord the king of the common bench and the barons of the exchequer of the said lord the king of the degree of the coif, into the exchequer chamber, according to the form of the statute made in the parliament of the lady *Elizabeth*, late queen of *England*, &c. held at *Westminster* on the 23d day of *November* in the 27th year of her reign, from the court of the said lord the king here before the king himself were transmitted; and the said *Thomas* in the same court of exchequer chamber aforesaid appearing hath assigned diverse matters for error in the record and proceedings aforesaid for the reverting and annulling of the judgment aforesaid, to which the said *Edward Phelipps* in the same court of exchequer chamber aforesaid likewise appearing hath pleaded, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid; and afterwards, to wit, on *Wednesday* the 26th day of *November* in the 5th year of the reign of the said lord the now king, the record and proceedings aforesaid, and the judgment on the same given, and the said causes for error by the said *Thomas* above alledged and assigned, being seen, and by the court of exchequer chamber aforesaid diligently examined and more

more fully understood, it seemed to the same court of exchequer chamber, that the record aforesaid was in nothing vitious or defective, and that there was no error in the said record: Therefore it was then and there considered by the same court of exchequer chamber, that the judgment aforesaid should be in all things affirmed, and should stand in its full force and effect, the said causes for error above assigned and alledged in any wise notwithstanding; and it was then and there farther considered by the same court, that the said *Edward* should recover against said *Thomas Smith* 30 l. to the same *Edward Phelipps* with his assent by the same court of exchequer chamber there adjudged, according to the form of the statute thereof made and provided, for his damages, costs and charges, which he had by reason of the delay of the execution of the judgment aforesaid on pretence of prosecuting the said writ of error; and thereupon the record aforesaid, as also the proceedings of the justices of the *C. B.* aforesaid and the barons of the exchequer aforesaid before them in the premisses had, by the same justices and barons before the lord the king wheresoever, &c. were then remitted, according to the form of the statute, &c. and in the same court of the said lord the king here before the king himself now remain, &c.

Judgment affirmed.

Costs.

3 H. 7. c. 10,

The record remitted.

Afterwards, to wit, on the 15th day of *January* in the 5th year of the reign of the lord *George* now king of *Great Britain*, &c. before the said lord the king and the peers of this realm in the present parliament at *Westminster* in the county of *Middlesex* assembled, comes the said *Thomas Smith* in his proper person and immediately says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid thereon in the said court of exchequer chamber of the said lord the king given, there is manifest error, in this, to wit, that the judgment aforesaid in the said court of exchequer chamber given was given for the said *Edward Phelipps*, for the affirmance of the judgment aforesaid in the said court of the lord the king before the king himself so as aforesaid given, for the damages, costs and charges of the said *Edward* by reason of the delay of the execution of the same judgment on pretence of prosecuting the said writ of error thereon in the said court of exchequer chamber by the said *Thomas* prosecuted, when by the law of *England* the judgment in the said court of exchequer chamber ought to have been given for the said *Thomas*, for the reversal of the said judgment in the said court of the said lord the king before the king himself so as aforesaid given; therefore in that it is manifestly erroneous,

Errors thereon assigned in parliament.

Phi. York.

And the said *Edward Phelipps*, esq; in his proper person before the said lord the king and the peers in the present parliament of *Great Britain* at *Westminster* in the county of *Middlesex* assembled

In nullo est erratum.

bled likewise comes and says, that there is no error either in the record and proceedings aforesaid or in the rendition of the judgment aforesaid, and prays, that the said lord the king and the peers in the present parliament of *Great Britain at Westminster* in the county of *Middlesex* aforesaid assembled now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid above for error assigned, and that the judgment aforesaid may be in all things affirmed: And because the court of the said lord the king here before the king himself in his parliament are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the said lord the king in his parliament until *Friday*, to wit, the 23d day of *January* next ensuing, at *Westminster* in the county of *Middlesex* aforesaid, to hear their judgment of and upon the premisses, because the court of the said lord the king here in his parliament thereof not yet, &c.

J. Comyns.

Tho. Pengelly.

Note; In this case the writ of error was in the rendition of the judgment of a plea, &c. between *Edward Phelipps, esq;* and *Thomas Smith, gent.* of a certain debt, &c. And the record certified was between *Edward Phelipps, esq;* and *Thomas Smith, bailiff of the borough of Ivelchester in the county of Somerset.*

Which variance the lords would not regard, but ordered it to come on upon the merits: And accordingly it was argued by counsel, and the judgment affirmed in parliament, with 5l. costs.

Wednesday 22 January 1689.

[264]
Order of the
house of lords
on a petition.
Raym. Rep.
381 to 384.
For the plain-
tiff in error to
assign his error
in four days,
otherwise the
transcript remit-
ted.

UPON reading the petition of *John Wright*, shewing, That he having obtained a judgment against one *Daniel Van Mildrett* in *Michaelmas* term last, and that the said *Daniel Van Mildrett* for delay hath brought his writ of error into this house the 16th of *December* last, but hath not assigned errors thereon, and praying that the said writ of error may be remitted, to the end he may have execution thereupon: It is ordered by the lords spiritual and temporal in parliament assembled, That the said *Daniel Van Mildrett* be, and is hereby required to assign error thereupon on or before *Saturday* next at ten of the clock in the forenoon, or otherwise the said transcript of the said judgment made on the behalf of the said *John Wright* shall be and is hereby remitted, to the end he may have judgment thereupon as if no such writ of error had been brought into this house.

Jo. Browne, Cl^r Parl^r.

To the right honourable the lords spiritual and temporal in parliament assembled.

The humble petition of *Edward Phelipps*, esq; defendant in a writ of error in parliament, wherein *Thomas Smith* is plaintiff,

Sheweth,

THAT your petitioner having obtained a judgment after verdict in the court of king's bench against the said *Smith*, in an action of debt for 500 *l.* which in *Michaelmas* term last, on a writ of error brought by the said *Smith* in the exchequer chamber, was unanimously affirmed by all the judges of the court of common pleas and barons of the exchequer: That the said *Smith* hath lately brought a writ of error returnable in parliament, in which the plaintiff in error hath named himself by a different addition from what he is named in the said action, with an intent thereby, as your petitioner is advised, to delay your petitioner in a most unreasonable and unusual manner from the recovery of his just debt.

Petition for the cause to be heard at the bar of the house.

That the plaintiff in error hath nevertheless assigned his errors, and your petitioner hath joined in error.

Your petitioner most humbly prays your lordships to appoint such a day for taking the premisses into your consideration and arguing the said errors, as to your lordships great wisdom shall seem meet.

And your petitioner shall pray, &c.

E. Phelipps.

Wednesday 28 January 1718.

UPON reading the petition of *Edward Phelipps*, esq; defendant in a writ of error depending in this house, wherein *Thomas Smith* is plaintiff, setting forth, That the petitioner having obtained a judgment after verdict in the court of king's bench against the said *Smith* in an action of debt, which in *Michaelmas* term last on a writ of error brought by the said *Smith* in the exchequer chamber was unanimously affirmed; that the said *Smith* having brought a writ of error returnable in parliament, in which the plaintiff in error hath named himself by a different addition from what he is named in the said action, with an intent to delay the petitioner from the recovery of his just debt; that the plaintiff hath nevertheless assigned his errors, and the petitioner hath joined therein, and praying that a day may be appointed for taking the premisses into consideration and arguing the said errors as to this house shall seem meet: It is ordered by the lords spiritual and temporal in parliament assembled, that the plaintiff in error be

The order thereupon.

Raym. 381.

be served with a copy of the said petition and this order; and that this house will hear counsel thereupon on *Thursday* the fifth day of *February* next at eleven a-clock:

The case of the defendant in error.

Case of defendant in error.

E*Edward Phelipps*, the now defendant in the writ of error, brought an action of debt in the court of king's bench against the now plaintiff *Thomas Smith*, bailiff of the borough of *Ivelchester*, for refusing to deliver to the said *Edward Phelipps* a copy of the poll taken at an election for members of parliament for the said borough, at which election the said *Edward Phelipps* was a candidate; and the said action was founded on the statute of the 7th and 8th of king *William III.* cap. 25. sect. 6. by which statute it is enacted, that every bailiff and other officer, to whom the execution of any writ or precept shall belong for electing of members to serve in parliament, shall forthwith deliver to such person or persons, as shall desire the same, a copy of the poll taken at such election, paying only a reasonable charge for writing the same: And that every bailiff and other officer, to whom the execution of any writ or precept for electing of members to serve in parliament doth belong, for every wilful offence contrary to the said act shall forfeit to every party so aggrieved the sum of 500*l.* to be recovered by him or them, his or their executors or administrators, together with full costs of suit.

The declaration sets forth, that the town of *Ivelchester* is an antient borough; and that the burgesses and inhabitants of the said borough, time out of mind, have chosen two burgesses to serve in parliament for the said borough: That the 17th of *January* 1 of king *Geo.* a writ issued out of chancery, directed to the sheriff of *Somerset*, commanding him to cause to be chosen two knights for the said county, and two burgesses for every borough within the same county, to serve in the parliament to be holden at *Westminster* on the 17th day of *March* then next following; which writ 26th of *January* following was delivered to *John Trevillian*, esq; then sheriff for the same county, who the same day made his precept to the said *Thomas Smith*, then bailiff of the said borough of *Ivelchester* (to whom the execution of the said precept of right did belong) for the election of two burgesses to serve in parliament for the said borough according to the said writ: That by virtue thereof on the second day of *February* following it was proceeded to election for the said borough, when sir *James Bateman*, *William Bellamy*, *John Hopkins*, and the said *Edward Phelipps*, esquires, stood candidates, and several electors voted for sir *James Bateman* and the said *Edward Phelipps*, esq; and several others for the other two candidates, and a poll being then demanded was had and taken in writing by the said bailiff: That on the 10th day of *February* following the candidate *Mr. Phelipps* required the said bailiff to deliver

deliver him a copy of the said poll, and was ready and offered to pay him any reasonable sum of money for the writing thereof as he should require: But the said bailiff did not deliver the same, but contrary to his duty, and the said act of parliament, voluntarily and utterly refused to deliver him a copy of such poll, whereby the plaintiff in the said action was intitled to demand and recover the said penalty of 500*l*.

Upon the general issue pleaded, this action was tried at the *Lent* assizes holden for the county of *Somerset* 2 of king *Geo.* before Mr. Justice *Eyre*, by a substantial jury, and after a very long trial upon full evidence, a verdict was given for Mr. *Phelipps* to the satisfaction of the judge who tried the cause; and it appeared that the said *Thomas Smith* (who is a practising attorney) behaved himself very arbitrarily, and that his whole proceeding as bailiff, and particularly this for which the action was brought, was in open defiance and contempt of the law. Upon this verdict the court of kings bench gave judgment for *Edward Phelipps*, the plaintiff in the action, and the defendant *Thomas Smith* brought a writ of error in the exchequer chamber, where the said judgment was affirmed unanimously by all the judges of the common pleas and barons of the exchequer.

That this action being founded on a law made to remedy many great abuses committed by officers concerned in elections for members to serve in parliament, which had been long complained of, and by which, if a remedy had not been timely applied, the very constitution of parliaments might in a great measure have been subverted; and the fact being verified by verdict, and the ground and nature of the action, as well as the form and manner of the proceeding, having been approved of by the judgment of all the judges of *England*,

[266]

*This defendant in the writ of error humbly prays,
that the said judgment in the exchequer chamber
may be affirmed by the judgment of this honourable
house, with costs.*

Tho. Lutwyche,
J. Comyns.

WHereas by virtue of his majesty's writ of error returnable into the house of peers in parliament assembled, a record of the court of king's bench was brought into this house on the sixth day of *January* last past, with the transcript thereof, wherein judgment is entred for *Edward Phelipps*, esq; against *Thomas Smith*, bailiff of the borough of *Iwelchester* in the county of *Somerset*; upon which errors were assigned, and issue joined, and this day counsel heard at the bar to argue the errors thereupon: It is ordered by the lords spiritual and temporal in parliament assembled, That the said judgment given for the said *Edward Phelipps* against the said *Thomas Smith* be and is hereby affirmed; and that the

Order for the
affirmance of the
judgment, and
remission of the
record.

the said *Edward Phelipps* do recover 5*l.* for his costs occasioned by the delay of execution of the said judgment by pretence of the said writ of error, according to the statute in that case made and provided; and that the transcript of the said record, wherein judgment is entred as aforesaid, be remitted.

The entry of the affirmance in parliament, which comes in after the continuance of the *In nullo est errat*, and is signed by the clerk of the parliament.

NOT yet &c. On which day before the same court of parliament at *Westminster* comes as well the said *Thomas Smith* as the said *Edward Phelipps* in their proper persons; but because the court of parliament aforesaid now here are not yet advised to give their judgment of and upon the premisses, day therefore is given as well to the said *Thomas Smith* as to the said *Edward Phelipps*, before the same court of parliament; until *Saturday* the 17th day of *March* next ensuing, wheresoever, &c. to hear their judgment thereon, because the court of parliament aforesaid here thereof not yet, &c. On which day before the same court of parliament at *Westminster* comes as well the said *Thomas Smith* as the said *Edward Phelipps* in their proper persons: Whereupon all and singular the premisses being seen, and by the court of parliament aforesaid now here more fully understood, and as well the record and proceedings aforesaid, and the judgment thereon given, as the said causes and matters by the said *Thomas Smith* above for error assigned, being diligently examined and inspected, and mature deliberation being thereon had, it seems to the court of parliament aforesaid now here, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, or in the affirmance of the same judgment, and that the said record is in no wise vitious or defective: Therefore it is considered by the same court of parliament aforesaid, that the judgment aforesaid, and also the affirmance of the same judgment, be in all things affirmed, and in their full force and effect stand, the said causes and matters by the said *Thomas Smith* above for error assigned in any wise notwithstanding: And it is farther considered by the same court of parliament aforesaid now here, that the said *Edward Phelipps* do recover against the said *Thomas Smith* 5*l.* to the same *Edward* with his assent by the same court of parliament aforesaid, according to the form of the statute thereof made and provided, adjudged for his damages, costs and charges, which he hath had by reason of the delay of the execution of the judgment aforesaid by pretence of prosecuting of the said writ of error; and thereupon the record aforesaid, as also the proceedings aforesaid in the same court of parliament in the premisses had, by the same court of parliament to the court of the said lord the king before the king himself wheresoever, &c. are remitted, &c.

William Cowper, Cl' Parl'.

[267]

Remain, &c.

The entry of the affirmance in parliament on the roll of the

Afterwards, to wit, on the 12th day of *December* in the 5th year of the reign of the lord the now king, the same lord the king sent to his trusty and well beloved *John Pratt*, knt. the chief

chief justice of the same lord the king assigned to hold pleas before the king himself, his writ close in these words, to wit, *George, &c.* To our trusty and well beloved *John Pratt*, knt. our chief justice assigned to hold pleas before us greeting: Because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us by bill between *E. Phelipps*, esq; and *T. Smith*, gent. of a certain debt which the said *E.* demanded of the said *T.* which said record and proceedings, by reason of error happening before the justices of the common bench and the barons of our exchequer in our exchequer chamber aforesaid, we have caused to be brought, and the judgment thereof is affirmed, as it is said, a manifest error hath happened, to the great damage of him the said *Thomas*, as by his complaint we have understood; We willing the error, if any hath been, should be duly corrected and full and speedy justice done to the parties in this behalf, command you, that if judgment thereof be given and affirmed, then the record and proceedings aforesaid, with all things touching them, to us in our present parliament under your seal distinctly and openly without delay you send, and this writ, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein, with the assent of the lords spiritual and temporal being in the same parliament, to correct that error what of right and according to the law and custom of *England* shall be to be done. Witness ourself at *Westminster* 12th day of *December* in the 5th year of our reign. By virtue of which said writ the same chief justice the record and proceedings of the plea aforesaid, with all things touching them, to the said lord the king in the present parliament with his own proper hands produced, according to the command of that writ.

Afterwards, to wit, 15th day of *January* in the 5th year of the reign of the said lord the king, before the said lord the king and the peers of this realm in the present parliament at *Westminster* in the county of *Middlesex* assembled comes the said *Thomas Smith* in his proper person and immediately says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid thereon in the said court of exchequer chamber of the said lord the king given, there is manifest error, in this, to wit, that the judgment aforesaid in the said court of exchequer chamber aforesaid given was given for the said *E. Phelipps*, for the affirmance of the judgment aforesaid in the said court of the lord the king before the king himself so as aforesaid given for the damages, costs and charges of the said *E.* by reason of the delay of the execution of the same judgment by pretence of prosecuting the said writ of error thereon in the said court of exchequer chamber aforesaid, when by the law of *England* the judgment in the said court of exchequer chamber aforesaid ought to have been given for the said *T.* for the reversal of the said judgment in the said court of the said lord the king before

fore the king himself so as aforesaid given; therefore in that there is manifest error.

And the said *E. Phelipps*, esq; in his proper person before the said lord the king and the peers in the present parliament of *Great Britain at Westminster* in the county of *Middlesex* assembled likewise comes and says, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, and prays, that the lord the king and the peers in the present parliament of *Great Britain at Westminster* in the county of *Middlesex* aforesaid assembled now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matter aforesaid above for error assigned, and that the judgment aforesaid may be in all things affirmed: And because the court of the said lord the king before the king himself in his parliament are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the said lord the king in his parliament until *Wednesday*, to wit, 28th day of *January* next ensuing, wheresoever, &c. to hear their judgment of and upon the premisses, because the court of the said lord the king here in his parliament thereof not yet, &c. On which day before the same court of parliament at *Westminster* aforesaid comes as well the said *T. Smith* as the said *E. Phelipps* in their proper persons; but because the court of parliament aforesaid now here are not yet advised to give their judgment of and upon the premisses, day therefore is given as well to the said *T. Smith* as to the said *E. Phelipps* before the same court of parliament until *Thursday*, to wit, the 5th day of *February* next ensuing, wheresoever, &c. to hear their judgment thereon, because the court of parliament aforesaid here thereof not yet, &c. On which day before the same court of parliament aforesaid at *Westminster* aforesaid comes as well the said *T. Smith* as the said *E. Phelipps* in their proper persons: Whereupon all and singular the premisses being seen, and by the court of parliament aforesaid now here more fully understood, and as well the record and proceedings aforesaid and the judgment on the same given, as the said causes and matters by the said *Thomas Smith* above for error assigned, being diligently examined and inspected, and mature deliberation being thereon had, it seems to the court of parliament aforesaid now here, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, or in the affirmance of the said judgment, and that the said record is in no wise vicious or defective: Therefore it is considered by the same court of parliament aforesaid, that the judgment aforesaid, and also the affirmance of the same judgment, be in all things affirmed and remain in their full force and effect, the said causes and matters by the said *Thomas Smith* above for error assigned in any wise notwithstanding; And it is farther considered by the same court of parliament aforesaid now here, that the said *Ed-*
ward

ward Philipps do recover against the said *Thomas Smith* 5*l.* to the same *Edward* by his assent by the same court of parliament aforesaid, according to the form of the statute thereof made and provided, adjudged for his damages, costs and charges, which he hath had by reason of the delay of execution of the judgment aforesaid by pretence of prosecuting the said writ of error; and thereupon the record aforesaid, and also the proceedings aforesaid in the same court of parliament in the premises had, by the same court of parliament to the court of the same lord the king before the king himself, wheresoever, &c. are remitted, &c.

Osgood and Alexander.

AFTERWARDS, to wit, on *Wednesday* next after 15 days of *Easter* in that same term, before the lord the king at *Westminster* come the said *John Osgood* and *Nathaniel Rouse* in their proper persons and say, that in the record and proceedings aforesaid, as as also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid is given as well against the said *John Woods* as against the said *John Osgood* and *Nathaniel Rouse*, when in truth the said *John Woods* in the plea aforesaid mentioned, before the trial of the issue in the record aforesaid between the parties aforesaid joined, and before the rendition of the judgment aforesaid, to wit, on the 20th day of *July* in the 8th year of the reign of the said lady the now queen, at *Horsham* aforesaid in the county of *Sussex* aforesaid died, and so the judgment aforesaid is erroneous and void in law: And the said *John Osgood* and *Nathaniel Rouse* pray, that the judgment aforesaid, for the error aforesaid and others being in the record and proceedings aforesaid, may be revoked, annulled and held as void; and that they the said *John Osgood* and *Nathaniel Rouse* may be restored to all things which they have lost by reason of the judgment aforesaid: And they pray a writ of the lady the queen, to warn the said *John Alexander* to be before the lady the queen at *Westminster* to hear the record and proceedings aforesaid; and to them it is granted.

Death of one of the defendants before the day in bank assigned for error.
SAUK. 3.

Scire fac' prayed.

Repl. that he is alive.

Rejoinder that he died.

And the said *John Alexander* by *John Allen* his attorney comes and says, that by any thing before alledged the judgment aforesaid ought not to be reversed because he says, that the said *John Woods* in the plea aforesaid mentioned is yet surviving and in full life; without that, that the same *John Woods*, before the trial of the issue aforesaid in the record aforesaid between the parties aforesaid joined, died, in manner and form as the said *John Osgood* and *Nathaniel Rouse* above have alledged; And this he is ready to verify: Wherefore he prays, that the judgment aforesaid may be in all things affirmed, &c.

And the said *John Osgood* and *Nathaniel Rouse* as before say, that the said *John Woods* died before the trial of the issue aforesaid, in manner and form as the same *John Osgood* and *Nathaniel* above have alledged: And this they pray may be inquired of by

the county: And the said *John Alexander* thereof likewise: Therefore the sheriff is commanded, that he cause to come before the lady the queen from the day of the Holy Trinity in three weeks, wheresoever, &c. 12, &c. by whom, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid, &c.

This issue was tried, and verdict for the plaintiff.

Joirell against Jennings.

The nisi prius
record on a writ
of error on a
judgment in
dower.

England, to wit. **T**HE lord the king hath sent to his trusty and well beloved *George Treby*, knt. his chief justice of the bench, his writ close in these words, to wit, *William* the third, &c. To our trusty and well beloved *G. T.* knt. our chief justice of the bench, greeting: Because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before you and your companions our justices of the bench, by our writ between *S. J.* widow, who was the wife of *J. J.* and *W. Jennings*, clerk, for this that the same *Walter* might render to the said *Susanna* her reasonable dower which belongs to her of the freehold which was of the said *John* her late husband, manifest error hath happened, to the great damage of the said *Walter*, as by his complaint we have understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the said *Walter* in this behalf, command you, that if judgment thereof be given, then the record and proceedings aforesaid, with all things touching them, to us under your seal distinctly and openly you send, and this writ, so that we may have them from the day of *Easter* in five weeks, wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein, to correct that error, what of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness ourself at *Westminster* 29th day of *April* in the 8th year of our reign.

[269]
3 Ro. Rep. 172.
3 Eult. 71.

The answer of George Treby, knt. the chief justice within named:

The return.
Salk. 754, 779.

The record and proceedings of the plea whereof mention is within made, with all things touching them, before the lord the king, wheresoever, &c. at the day within contained, I send in a certain record to this writ annexed, as I am within commanded.

G. Treby.

Plus

Pleas inrolled at Westminster before George Treby, knt. and his companions, justices of the lord the king of the bench of Trinity term in the 7th year of the reign of the lord William the third, by the grace of God of England, &c. Roll 1227.

Stafford, to wit. Susanna Jodrell, widow, who was the wife of John Jodrell, yeoman, by Jonas Slaney her attorney demands against Walter Jennings, clerk, the third part of one messuage, 10 acres of meadow, and 30 acres of pasture with the appurtenances in Earnfield, otherwise Yearnsfield, as the dower of the said Susanna of the endowment of the said John her late husband, &c.

Declaration.

And the said *Walter* by *John Blackmore* his attorney comes and says, that the said *Susanna* ought not to have dower of the tenements aforesaid with the appurtenances of the endowment of the said *John* her late husband, because he says, that the same *John*, late husband, &c. neither on the day he married the said *Susanna*, nor ever after, was seised of the tenements aforesaid with the appurtenances whereof, &c. of such his estate, so that he could endow the said *Susanna* thereof: And of this he puts himself upon the country, and the said *Susanna* likewise, &c. Therefore the sheriff is commanded, that he cause to come here from the day of the Holy Trinity in three weeks 12, &c. by whom, &c. and who neither, &c. to recognize, &c. On which day the jury between the parties aforesaid in the plea aforesaid was put thereof between them in respite here until this day, to wit, from the day of St. Michael in three weeks then next following, unless the justices of the said lord the king assigned to take assises in the county aforesaid, by the form of the statute, &c. on Thursday the first day of August next past at Stafford in the county aforesaid first come: and now on this day comes as well the said *Susanna* as the said *Walter* by their attorneyes aforesaid, and the said justices of assize before, &c. have sent here their record in these words: Afterwards the day and place within contained, before *George Treby*, knt. chief justice of the said lord the king of the bench, and *Thomas Rokeby*, knt. one of the justices of the said lord the king of the bench, justices of the said lord the king assigned to take assises in the county of Stafford, by the form of the statute, &c. comes as well the within named *Susanna Jodrell* as the within written *Walter Jennings* by their attorneyes within contained; and the jurors of the jury whereof mention is within made being called, some of them, to wit, *Richard Cotton*, *Richard Pott*, *John Wooton* and *Thomas Noval* come, and on that jury are sworn; and because the rest of the jurors of the same jury have not appeared, therefore others from the by-standers by the sheriff of the county aforesaid hereto elected, at the request of the said *Susanna Jodrell*, and by the command of the justices aforesaid are added anew, whose names are annexed to the panel

Plea.
Never seised that
dower.

Venire awarded.

13 E. 1. c. 30.
12 E. 2. c. 4.
14 E. 3. c. 16.

The postea.

35 H. 8. c. 6.

Verdict for the
demandant.

[270]

The verdict set
aside, and a
verdict *de novo*
awarded.

The postea;

13. E. 1. c. 30.
12 E. 2. c. 4.
14 E. 3. c. 16.

within written, according to the form of the statute in such case made and provided; and the jurors so added anew, to wit, *J. Palmer, J. Reynolds, L. Dickenson, R. Stone, R. Greefebrook, J. Palmer, A. Ward* and *J. Philipps*, being called likewise come who to say the truth of the within contained, together with the other jurors aforesaid first impanelled and sworn, being elected tried and sworn, say on their oath that the within named *John*, the late husband of the said *Susanna*, on the day that he married the within named *Susanna* was seised of the tenements within written with the appurtenances whereof, &c. of such his estate, so that he could endow the said *Susanna* thereof, as by the declaration within written is supposed: And the same jurors on their oath farther say, that the said *John*, of such his estate in the tenements aforesaid with the appurtenances being as aforesaid seised, died so thereof seised on the 25th day of *March* in the year of the Lord 1677, and that the tenements aforesaid with the appurtenances are worth by the year one pepper-corn, and they assess the damage of the said *Susanna* by reason of the detention of her dower aforesaid, besides her costs and charges by her about her suit in this behalf expended, to 1*d.* and for those costs and charges to 40*s.* And because the justices here will advise of and upon the premisses before they give judgment thereon, day is given to the parties aforesaid here until in the octave of *St. Hillary* to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here comes as well the said *Susanna* as the said *Walter* by their attornies aforesaid, and hereupon the record and verdict aforesaid being read and heard, it seems to the justices here that the jurors aforesaid have misbehaved themselves in giving the verdict aforesaid, so that that verdict is idle and void in law; Therefore it is considered, that the verdict aforesaid be held as idle and void, and had for nothing; and the process against the jurors first impanelled being omitted, and that panel intirely withdrawn, the sheriff is commanded, that he cause to come anew here in the octave of the purification of the blessed *Mary* 12, &c. by whom, &c. and who neither, &c. to recognise, &c. because as well, &c. And now here on this day comes the said *Susanna* by her attorney aforesaid, and the said justices of assise, before whom, &c. have sent here their record in these words: Afterwards the day and year within contained, before *S. Eyre*, knt. one of the justices of the lord the king assigned to hold pleas before the king himself, and *T. Breton*, esq; to the said *S. Eyre* and *T. Rokeby*, knt. another justice of the said lord the king assigned to hold pleas before the king himself, justices of the said lord the king assigned to take assises in the county of *Stafford*, by the form of the statute, &c. being this time associated, the presence of the said *T. Rokeby* being not expected, by virtue of the writ of the lord the king of *si non omnes*, &c. comes as well the within named *Susanna Jodrell* as the within written *Walter Jennings* by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called, some of them, to wit,
T. Mason

T. Mason and *M. Shaw*, come and on that jury are sworn; and because the rest of the jurors of that jury have not appeared, therefore others from the by-standers by the sheriff of the county aforesaid hereto elected, at the request of the said *S. Jodrell*, and by the command of the justices aforesaid, are added anew, whose names are annexed to the panel within written, according to the form of the statute in such case made and provided; which said jurors so added anew, to wit, *J. Batterton*, *T. Bould*, *J. Kendredine*, *T. Corbett*, *J. Willet*, *J. Beane*, *E. Ward*, *R. Potts*, *T. Ashbury* and *W. Beechouse*, being called likewise come, who to say the truth of the within contained, together with the other jurors aforesaid, first impanelled and sworn, being elected, tried and sworn, say upon their oath, that the within written *John Jodrell*, late husband of the said *Susanna*, on the day that he married the said *Susanna* and afterwards was seised of the tenements within written with the appurtenances, whereof, &c. of such estate, so that he might have endowed the said *Susanna*, as by the declaration within written is supposed: And the same jurors farther on their oath aforesaid say, that the said *John*, of such his estate in the tenements aforesaid with the appurtenances being as aforesaid seised, died so thereof seised on the first day of *July* 1677. And they farther say, that the tenements aforesaid with the appurtenances are worth by the year 14*l.* and they assess the damages of the said *Susanna* by reason of the detention of the dower within written, besides her costs and charges by her about her suit in this behalf expended, to 12*d.* and for those costs and charges to 40*s.* Therefore it is considered, that the said *Susanna* do recover against the said *Walter* as well her seisin of the third part aforesaid, to hold to herself in severalty by mores and bounds, as the value of the third part aforesaid, from the time of the death of the said *John* her late husband, which said value from the time of the death of the said *John* her late husband amounts in the whole to 87*l.* and her damages aforesaid to 41*s.* by the jurors aforesaid in form aforesaid assessed, as also 12*l.* 19*s.* to the same *Susanna* at her request for her costs and charges aforesaid by the court here of increase adjudged, which said value and damages amount in the whole to 102*l.* And the said *Walter* in mercy: And hereupon the said *Susanna* prays a writ of the lord the king to be directed to the sheriff of the county aforesaid, to cause her to have full seisin of the third part aforesaid with the appurtenances; and it is granted her returnable here on the morrow of the Holy Trinity, &c.

35 H. 8. c. 6.

Judgment sign'd
13th day of May,
S W.Habeas fac' seisin
awarded.

Afterwards, to wit, on *Saturday* next after the octave of *St. Hillary* in that same term, before the lord the king at *Westminster* comes the said *W. Jennings* by *N. Hickman* his attorney and says, that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that by the record aforesaid it appears, that the said *Susanna* on the said morrow of the Holy Trinity in the said Trinity term in the 7th year of the reign of the said lord the now king

Error assigned.

came into the said court of the bench before the said *G. Treby*, knt. and his companions, then justices of the same court, by the said *J. Slaney* her attorney, and demanded against the said *Walter* in form aforesaid in the plea aforesaid; and that the said *Walter* on the said morrow of the Holy Trinity likewise came into the same court before the said justices by the said *John Blackmore* then his attorney, and then said, that the said *Susanna* ought not to have dower of the tenements aforesaid with the appurtenances of the endowment of the said *John* her late husband, because he then said that the same *John*, late husband, &c. neither on the day that he married the said *Susanna*, nor ever after, was seised of the tenements aforesaid with the appurtenances, whereof, &c. of such his estate, so that he could endow the said *Susanna* thereof; And of that he then put himself upon the country; and thereupon the issue aforesaid in form aforesaid was joined; the same *Walter* says, that he on the said morrow of the Holy Trinity in the said Trinity term in the 7th year above said, and at the said time of the said appearance of him the said *Walter* in the said court of bench before the said justices of the same court by the said *John Blackmore* then his attorney aforesaid, and also at the said time of the rendition of the judgment aforesaid in form aforesaid, was under the age of 21 years, to wit, at *Earnfield*, otherwise *Yearnfield* aforesaid in the county of *Stafford* aforesaid: in which case the same *Walter* ought to have appeared and pleaded by his guardian, and not by his attorney, in manner and form aforesaid; and the same *Walter* says, that in that there is manifest error: And this he is ready to verify: And the same *Walter* prays a writ of the lord the king, to warn the said *Susanna* to be before the lord the king to hear the record and proceedings aforesaid; and to him it is granted, &c.

[271]

Nonage.

Re. l. Full age.

Ventre awarded,

And the said *Susanna* by *John Lilly* her attorney freely here in court comes and immediately says, that the said *Walter* ought not to have or maintain his writ of error aforesaid against her, because she says, that he the said *Walter* on the said morrow of the Holy Trinity in the same Trinity term, and at the said time that he by his attorney aforesaid appeared at the suit of the said *Susanna*, and on the day of the rendition of the judgment aforesaid, was of the full age of 21 years: And of this she puts herself upon the country: And the said *Walter* thereof likewise, &c. Therefore the sheriff of the county of *Stafford* aforesaid is commanded, that he cause to come before the lord the king on the octave of the purification of the blessed *Mary*, wheresoever, &c. 12, &c. by whom &c. and who neither, &c. to recognise, &c. upon their oath, whether he the said *Walter* on the said morrow of the Holy Trinity in the same Trinity term, and at the said time that he by his attorney aforesaid appeared at the suit of the said *Susanna*, and on the day of the rendition of the judgment aforesaid, was of the full age of 21 years, or not, because as well, &c. The same day is given to the parties aforesaid, &c.

On

On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid: And the sheriff of the county of *Stafford*, to wit, *William Murrell*, esq; returns the said writ of *venire facias* to him in form aforesaid directed, and the names of the jurors in all things served and executed, none of whom comes: Therefore the sheriff is commanded, that he distrain the jurors aforesaid by all their lands and chattels in his bailiwick, so that he may have their bodies before the lord the king from the day of *Easter* in 15 days wheresoever, &c. unless the justices of the said lord the king assigned to take assises in the county of *Stafford* aforesaid on *Wednesday* 24th day of *March* at *Stafford* in the county aforesaid, by the form of the statute, &c. first come for want of jurors, &c. Therefore let the sheriff have the bodies, &c. The same day is given to the parties aforesaid, &c.

Distring
awarded.

Cote against Lynch.

Mich. 8 W. 3. Roll 200.

W*illiam* the third, by the grace of God, &c. To our trusty and well beloved counsellor *Richard Pyne*, knt. our chief justice assigned to hold pleas before us in our kingdom of *Ireland*, greeting: Because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court of common bench in our kingdom of *Ireland* before you and your companions then our justices of the same court, by our writ between *John Lynch*, gent, and *Richard Cote*, esq; of certain trespasses and ejectments on the said *John* by the said *Richard* committed, which said record and proceedings, by reason of error happening, we have caused to be brought before us in our kingdom of *Ireland*, and the judgment thereon before us in our said kingdom of *Ireland* is affirmed, and before us in our said kingdom of *Ireland* now remain, as it is said, a manifest error hath happened, to the great damage of the said *Richard*, as by his complaint we have understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if the judgment thereon be given and affirmed, then the record and proceedings aforesaid, with all things touching them, to us under your seal you distinctly and openly send, and this writ; so that we may have them on the octave of the purification of the blessed *Mary*, wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein to correct that error what of right shall be to be done; and give notice to the said *John*, that he be then there to proceed in the plea aforesaid, and farther to do and receive what our said court shall consider in the premisses. Witness ourself at *Westminster* 18th day of *December* in the 7th year of our reign.

A writ of error to the C. J. of the K. B. in *Ireland* to certify the record of a judgment in the C. B. there, and affirmed in the K. B. there to the K. B. here.

Allowed, *Richard Pyne*,

Layton.

The

The record and proceedings of the plea whereof mention is within made, with all things touching them, before the lord the king, wheresoever, &c. at the day and place within contained, I send in a certain record to this writ annexed; and I have given notice to the within named *John Lynch*, that he be then there to proceed in the plea aforesaid, as I am within commanded.

So I answer, *Richard Pyne*.

[272]
The pleadings.

Pleas before the lord the king at the king's court of Trinity term in the 7th year of the reign of our lord William the third, by the grace of God of England, Scotland, France and Ireland king, defender of the faith, &c. Witness Richard Pyne, knt.

Savage.

The writ of error to the C. J. of the C. B. in Ireland to certify the record into the king's court there.

THE lord the king hath sent to his trusty and well beloved counsellor *Richard Pyne*, knt. his writ close in these words, to wit, *William the third*, by the grace of God of *England, Scotland, France and Ireland* king, defender of the faith, &c. To our trusty and well beloved counsellor *Richard Pyne*, knt. greeting: Because in the record and proceedings, and also in the rendition of the judgment of a plea which was before you and your companions, our justices of the common bench of our kingdom of *Ireland*, by our writ between *John Lynch*, gent. plaintiff, and *Richard Cote*, esq; defendant, in a plea of trespass and ejectment, as it is said, a manifest error hath happened, to the great damage of the said *Richard*, as by his complaint we have understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment be therein given, then the record and proceedings of the plea aforesaid, with all things touching them, to us under your seal you distinctly and openly send, and this writ; so that we may have them before us in the octave of the purification of the blessed virgin *Mary*, wheresoever we shall then be in *Ireland*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein to correct that error what of right and according to the custom of our kingdom of *Ireland* shall be to be done. Witness our trusty and well beloved counsellor *Henry* lord baron *Capell* of *Tewkesbury*, *Cyrrill Wych*, knt. and *William Duncomb*, esq; justices and governors general of our kingdom of *Ireland*, at the king's court the first day of *February* in the 7th year of our reign. *Carr' and Carr'.*

By virtue of this writ to me directed, the record and proceedings of the plea whereof mention is within made, with all things touching them, to the most serene lord the king I most humbly send, as this writ commands and requires.

Richard Pyne.

Pleas

Pleas at the king's court before Richard Pyne, knt, and his companions, justices of the lord and lady William and Mary, by the grace of God of England, Scotland, France and Ireland king and queen, defenders of the faith, &c. of their bench of their kingdom of Ireland of Hillary term in the 5th year of their reign.

Walker.

Midd', to wit. **R**ichard Coote, esq; was attached to answer *John Lynch*, gent. in a plea why with force and arms, &c. into the castle, manor and town of *Gormanstowne*, and 200 messuages, 200 cottages, 200 gardens, 100 orchards, three wind-mills, three fulling-mills, 1000 acres of land, 1000 acres of meadow, 1000 acres of pasture, 1000 acres of heath and furze with the appurtenances, in the town and land of *Gormanstowne*, *Carrowstowne*, *Richardstowne*, *Boltray*, *Loogdeory*, *Balloy*, *Stamullni* and part of *Caddelstowne*, all and singular which premisses lie in the barony of *Duleeke* and county aforesaid, which *Jenico Preston*, gent. commonly called *Jenico* viscount of *Gormanstowne*, demised to the said *John Lynch* for a term which is not yet passed, entered, and him the said *John Lynch* from his farm aforesaid, his term aforesaid therein not yet ended, ejected, and other outrages committed on him, to the great damage, &c. and against the peace, &c. And whereon the same *John Lynch* by *Michael Hall* his attorney complains, that whereas the said *Jenico Preston* on the 1st day of *May* in the year of the Lord 1693, at *Gormanstowne* aforesaid in the county aforesaid, had demised and to farm let to the same *John Lynch* the castle, manor and town of *Gormanstowne*, and 200 messuages, 200 cottages, 200 gardens, 100 orchards, three wind-mills, three fulling-mills, 1000 acres of land, 1000 acres of meadow, 1000 acres of pasture, and 1000 acres of heath and furze with the appurtenances, in the town and land of *Gormanstowne*, *Carrowstowne*, &c. all and singular which premisses are lying and being in the barony of *Duleeke* in the county of *Middlesex* aforesaid; To have and to hold all and singular the demised premisses aforesaid to the same *John Lynch*, his executors, administrators and assigns, for the term of 21 years then next ensuing: By virtue of which said demise the same *John Lynch*, on the second day of the month of *May* in the year of the Lord 1693 above said, into the demised premisses aforesaid with the appurtenances entered, and was thereof possessed; and being so thereof possessed the said *R. C.* on the third day of *May* aforesaid, in the year above said, with force and arms into the demised premisses aforesaid in and upon the possession of him the said *John* thereof entered, and him the said *John* from his farm aforesaid, his term aforesaid therein not yet ended, with force and arms ejected, expelled and amoved, and him the said *John* so expelled from his farm thereof hath kept out, and yet doth keep out, and other outrages on the same *John* then and there committed, against the peace of the

Not guilty.

Demise of the
queen.Verdict at bar
for the plaintiff.

the lord and lady the now king and queen, &c. to the great damage of the said *John*; whereby he says that he is prejudiced and hath damage to the value of 4000*l.* sterling: And therefore he produce the suit, &c. And the said *Richard* by *R. P.* his attorney comes and defends the force and injury when, &c. and says that he is not guilty of the premisses aforesaid above charged on him in manner and form as the said *John* hath above against him declared: And of this he puts himself on the country: And the said *John* likewise, &c. Therefore the sheriff is commanded that he cause to come here from the day of *Easter* in 15 days 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid here, &c. Afterwards the proceedings thereof between the parties aforesaid in the plea aforesaid being continued by the jury thereof between them being respited here until this day, to wit, from the day of *St. Hillary* in 15 days then next ensuing, before which day the said lady *Mary* late queen of *England* departed this life, after whose death, to wit, at the said 15th day of *St. Hillary*, comes as well the said *J. L.* gent. as the said *R. C.* esq; by their attorneys aforesaid; and the jurors thereof impanelled being called likewise come, who to say the truth of the premisses, being elected, tried and sworn, say on their oath, that the said *R. C.* is guilty of the trespass and ejectment aforesaid in manner and form as the said *J. L.* above against him complains; and they assess the damages of the said *John* by reason of the trespass and ejectment aforesaid, besides his costs and charges by him about his suit in this behalf expended, to 12*d.* and for those costs and charges to 6*d.* Therefore it is considered, that the said *J. L.* gent. do recover against the said *R. C.* his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances, and his damages aforesaid to 18*d.* by the jurors aforesaid in form aforesaid assessed, and also 36*l.* 6*s.* 9*d.* to the said *J. L.* for his costs and charges aforesaid with his assent by the court here of increase adjudged, which said damages in the whole amount to 36*l.* 8*s.* 3*d.* and the said *R. C.* be taken, &c.

Examined by *Walker*.Reire facias
quare executionem
non awarded.

Afterwards, to wit, on *Wednesday* next after the morrow of the Holy *Trinity* in that same term, before the lord the king at the king's court comes the *J. L.* by *C. R.* his attorney; and the same *John* prays a writ of the lord the king to warn the said *R. C.* to be before the said lord the king, to shew if he has or knows any thing to say for himself, why the said *J. L.* ought not to have his execution against him of and upon the judgment aforesaid; and to him it is granted, &c. Whereby the sheriff of the county of *Middlesex* is commanded, that by good, &c. he give notice to the said *R. C.* that he be before the lord the king on *Tuesday* next after three weeks of the Holy *Trinity*, wherefore, &c. to shew in form aforesaid, if, &c. and farther, &c. The same day is given to the said *John*, &c. On which day before

before the said lord the king at the king's court comes the said *J. L.* by his attorney aforesaid, and offered himself the fourth day of plea against the said *R. C.* in the plea aforesaid; and he being solemnly called doth not come; and the sheriff now here hath return'd, that he hath nothing, &c. nor is found, &c. Therefore as before the sheriff of the county of *Middlesex* aforesaid is commanded, that by good, &c. he give notice to the said *R. C.* that he be before the said lord the king on *Wednesday* next after the morrow of *All Souls*, wheresoever, &c. to shew in form aforesaid, if, &c. and farther, &c. The same day is given to the said *J. L.* &c. On which day before the lord the king at the king's court comes as well the said *J. L.* by his attorney aforesaid, as the said *R. C.* by *L. M.* his attorney; and hereupon the same *R. C.* produces here in the court of the said lord the king before the king himself a certain bill of exceptions, with the seal of *R. Cox*, knt. second justice of the said lord the king of his court of the bench of kingdom of *Ireland*, and *J. Jeffreson*, knt. one of the justices of the same court, at the request of the said *R. C.* according to the form of the statute in such case made and provided, thereto put, as it is asserted; praying it to be here enrolled; and to him it is granted, &c. Which said bill follows in these words, to wit, Be it remember'd, that whereas *J. Lynch*, gent. before *Richard Pyne*, knt. and his companions, justices of the lord the now king of his bench of his kingdom of *Ireland* at the king's court *Dublin*, prosecuted against *R. Coote*, esq; a certain plea of trespass and ejectment by writ of the said lord the king and of the said late queen, supposing by his declaration on his writ aforesaid, that *Jenico Preston*, gent. commonly called *Jenico* lord viscount *Gormanstowne*, on the first day of *May* in the year of the Lord 1693, at *Gormanstowne* in the county of *Middlesex* had demised and to farm let to the same *J. L.* the castle, manor and town of *Gormanstowne*, and 200 messuages, 200 cottages, 200 gardens, 100 orchards, three wind-mills, three fulling-mills, 1000 acres of land, 1000 acres of meadow, 1000 acres of pasture, and 1000 acres of heath and furze with the appurtenances in *Gormanstowne*, &c. all and singular which premises lie and be in the barony of *Duleek* in the county aforesaid; To have and to hold all and singular the demised premises aforesaid to the same *John Lynch*, his executors, administrators and assigns, for the term of 21 years then next ensuing; and that by virtue of the same demise the same *John Lynch* on the second day of the month of *May* aforesaid in the year of the Lord 1693 aforesaid into the demised premises aforesaid with the appurtenances entered, and was thereof possessed; and that being so thereof possessed the said *R. C.* on the third day of *May* in the year aforesaid into the demised premises aforesaid in and upon the possession of him the said *John* thereof entred, and him the said *John* from his farm aforesaid, his term aforesaid therein not yet ended, with the like force and arms ejected, expelled and amoved, and him the said *John* so thereout expelled from his farm aforesaid hath kept out, and yet doth

An alias awarded.

Bill of exceptions.
Pract. Reg. 232.
13 E. 1 c. 31.

Recital of the record of the trial.

[274]

The evidence for
the plaintiff.

Irish act, 13 C.
2.

Lease;

Entry.
Ouster.

The evidence for
the defendant.

doth keep out, and other outrages on him then and there committed, to the damage of the said *John* 4000 *l.* sterling; to which said declaration the said *R. C.* by *R. P.* his attorney came into the same court before the said justices and defended the force and injury when, &c. and said, that he the said *Richard* was not guilty of the trespass and ejectment aforesaid in the declaration aforesaid mentioned: And of this he put himself on the country: And the said *J. L.* likewise: And now here at the trial of the issue aforesaid between the parties aforesaid by *R. R.* esq; of counsel with the said plaintiff, to maintain the issue aforesaid on the part of the said plaintiff, and to prove the title of the said *J. Preston*, the lessor of the said plaintiff, to the demised premises aforesaid at the time of the demise aforesaid made, he gave in evidence to the jurors aforesaid a certain act of parliament of the lord *Charles* the second, late king of *England*, &c. begun in *Dublin* in this kingdom of *Ireland* on the 8th day of *May* in the 13th year of the reign of the lord *Charles* the second the late king, and there continued by several prorogations until the 26 day of *October* in the 17th year of the reign of the same late king *Charles* the second, intituled, *An act for the better explaining of some doubts arising upon an act intituled, An act for the better execution of his majesty's gracious declaration for the settlement of this kingdom of Ireland, and satisfaction of the several interests of adventurers, soldiers, and other his subjects there; and for making some alterations of, and additions unto the said act for the more speedy and effectual settlement of the said kingdom;* by which said act it is among other things enacted, that He likewise gave in evidence (*all the particular matters given in evidence must be recited*) that the said *Jenico* viscount *Gormanstowne* after the making of the indenture aforesaid, to wit, on the 18th day of *October* in the year of the Lord 1696, died without any issue male of his body begotten; and that the said *Jenico Preston*, the lessor of the now plaintiff, and *Jenico Preston*, the first begotten son of *Nich. Preston*, brother of the said *Jenico*, late viscount *Gormanstowne*, in the indenture of release aforesaid mentioned, is one and the same person, and not another nor divers; and that the said *Jenico Preston*, the lessor of the now plaintiff, after the death of the said *Jenico* viscount *Gormanstowne* did demise the demised premises aforesaid to the said *John Lynch* in manner and form as in the declaration is contained; and that the said *John Lynch* by virtue of the demise aforesaid entred, and was thereof possessed until the said *Richard Coote* ejected him in manner and form as the said *John Lynch* above against him complains.

Nehemiah Donnellan, esq; the king's premier serjeant at law, of counsel with the said *R. Coote*, to prove that the said *Jenico* had no seisin, interest or title, in or to the said town, land and tenements, and that he could not recover possession of the premises in the declaration aforesaid mentioned, and that the said *Richard* was not guilty of the trespass and ejectment aforesaid on the part of the said *R. C.* to the jurors aforesaid in evidence offered, and would have proved, that all and singular the town, lands

lands and tenements in the declaration mentioned were seised and sequester'd into the hands and to the use of *Charles* the first late king of *England*, after the 23d day of *October* 1641, &c. And farther the said *N. Donellan*, on the part of the said defendant, shewed and gave in evidence to the jurors aforesaid, that farther by the said act of explanation it is provided, that the said commissioners to put the act aforesaid in execution, &c. and farther the said *N. D.* to the same jurors in evidence offered, and would have proved, that the lands, tenements and premisses aforesaid in the declaration aforesaid mentioned were in the seisin of the said *R. C.* at the time of the making of the act aforesaid, as assignee of the said *Charles*, late earl of *Montrath*, being the son of the said earl, and the lands aforesaid being to him duly assigned by the same late earl, and to him and his heirs duly appointed in limitation, according to the true intent of the said acts; and that the lands in the declaration were the lands of the said viscount *Gormanstowne*, and to him by the last clause or provision, after reprisals to the same *Richard* to be made, to be restored; and that the same lands and tenements contain in themselves, and at the time of making the said act of explanation did contain in themselves 1400 acres of arable land, and that no other forfeited lands were assigned to the same *Richard* as assignee of the said viscount, or to any other person, the heir or assignee of the said viscount, in satisfaction, except lands containing 1100 acres and no more; and that no satisfaction was made for the rents, advantages or profits of the said lands received by the same lord viscount *Gormanstowne* in the said act named, or by the agents

after the entry upon the premisses aforesaid by him made; and for these reasons, and until the full number of 1400 acres should be assigned to the same *Richard* in satisfaction of the said 1400 acres in the said declaration mentioned, and until satisfaction should be to him made for the rents and profits of the premisses aforesaid, according to the true intent of the same act, neither the said viscount, nor his assigns ought to be restored to the tenements aforesaid in the declaration aforesaid mentioned: And the said *N. D.* farther gave and shewed in evidence to the same jurors on the behalf of the said *R. Coote*, that the said *Jenico*, late lord viscount *Gormanstowne*, who by the same act was restored to the same tenements, was attainted of high treason committed against the lord the now king and the late lady the queen, to wit, on the 10th day of *April* in the 3d year of the reign of the said lord and lady the king and queen, by virtue whereof all lands and tenements were forfeited to the said lord and lady the king and queen without any office or inquisition thereof found or to be found, according to the form of the statute in such case made and provided, and by reason thereof were seised into the hands of the lord and lady the king and queen; wherefore because the hands of the said lord the now king, or of the said lord the king and of the late lady the queen, were not moved, the said *Jenico* in the declaration aforesaid mentioned by

[275]

Amicus marui

entry

The plaintiff's
counsel gave that
for evidence
which is not evi-
dence.

The judges de-
sired to declare
the law to the
jurors.

But they affirm-
ed that to be law
which was not
law;

wherefore the de-
fendant's counsel
tendered this
bill, which the
justices sealed.
13 E. 1. c. 31.

Certiorari to the
justices to own or
deny the seal.

The justices ap-
pear and own
their seal.

entry no possession or seisin could obtain; therefore for that reason the demise of the premises aforesaid to the same *J. Lynch*, made as is supposed, was invalid and of no effect: And he farther shewed in evidence to the same jurors and said, that the said instrument in writing produced on the part of the plaintiff imported an inrolment in the exchequer of a certain order made by the same commissioners for the execution of the said act of parliament, to wit, and order bearing date the 1st day of *January* 1668, by *R. Rochfort*, esq; of counsel with the plaintiff, in evidence to the jurors aforesaid shewn, ought not to be given without proof of the same by the oath of witnesses, that the order aforesaid was signed and sealed by the same commissioners, because it was not of record, nor in itself any order which was recorded; and he the said *N. D.* desired the said justices, before whom the trial of the issue aforesaid was; to inform the jurors aforesaid, and declare to them the law of and upon the premises, and that the lease aforesaid to the same plaintiff made, for the reason aforesaid, was invalid, and that the said *Jenico Preston* ought not to be restored to the premises aforesaid by reason of the impediments and for the causes aforesaid, which ought to be removed, according to the form and effect of the said statute, before he could be restored; but the same justices affirmed to the jurors aforesaid, that the said matter, by the said *N. D.* in manner and form aforesaid shewn, was of no effect to preclude the said *Jenico* aforesaid, or the said plaintiff, from having or maintaining his action aforesaid; wherefore the same *N. D.* because the matter aforesaid by the same *N.* shewn, and to the jurors aforesaid in evidence produced and given, doth not appear nor could in any manner appear by the verdict of the jurors aforesaid required of the same justices, according to the form of the statute in such case made and provided, this present bill, which contains in it self the matters aforesaid to the same jurors by the said *N.* in evidence shewn in manner and form aforesaid, which said justices aforesaid, at the request of the said *N.* to this present bill, according to the form of the statute in such case, did put their seal, at the king's court aforesaid 4th day of *February* 1694. *R. Cox*, *J. Jeffreson*. And the same *R. Coote* prays a writ of the said lord the king, to warn the said *R. Cox*, knt. and *J. Jeffreson*, knt. the justices aforesaid, that they be before the said lord the king, wheresoever, &c. and it is granted him, &c. whereby the same justices are commanded to be before the said lord the king on *Saturday* next after the morrow of *St. Martin*, wheresoever, &c. to confess or deny their seals by them to the bill of exceptions aforesaid, as aforesaid is asserted to be put, according to the form and effect of the statute, &c. On which day before the said lord the king at the king's court come the said *R. Cox* and *J. Jeffreson* in their proper persons, and confess the seals by them to the bill of exceptions aforesaid, as aforesaid is asserted to be put, were the seals of them the said *R. Cox* and *J. Jeffreson*: And hereupon the same *R. Coote* produces here in the court of the said lord

Another writ of error.

And the king before the king himself a certain other writ of error in the premisses, to *R. Reynell*, knt. and bart. chief justice of the said lord the king here, &c. directed, in these words, to wit, *William the third*, &c. To our trusty and well beloved counsellor *R. Reynell*, knt. and bart. our chief justice assigned to hold pleas before us in our kingdom of *Ireland*, and his companions our justices there, greeting: Because in the record and proceedings of a plea which was in our court and of the lady *Mary* the late queen of the common bench, before our trusty and well beloved counsellor, and of the lady *Mary* our late queen, *Richard Pyne*, knt. and his companions, our justices and of the lady *Mary* our late queen of the same bench, as also in the rendition of the judgment of the same plea which was in our court of our common bench between *John Lynch*, gent. plaintiff, and *Richard Cote*, esq; defendant, in a plea of trespass and ejectment, as it is said, a manifest error hath happened, to the great damage of the said *Richard*, as by his complaint we have understood; We command you, that the record and proceedings aforesaid being inspected, you farther cause to be done therein to correct that error what of right and according to the law and custom of our kingdom of *Ireland* shall be to be done. Witness our trusty and well beloved counsellor *Henry* lord baron *Capell* of *Tewkesbury*, our deputy general governor of our kingdom of *Ireland*, at the king's court 31st day of *May* in the 7th year of our reign.

Allowed *R. Reynell*.*Carr*' and *Carr*' by *Carr*'.

[276]

And hereupon the same *R. Cote* by his attorney aforesaid comes and says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that by the record and proceedings aforesaid it appears, that the judgment aforesaid in the plea aforesaid given was given for the said *J. Lynch* against him the said *R. Cote*, when by the law of the land of this kingdom of *Ireland* judgment in that plea ought to have been given for the said *Richard* against the same *John*; wherefore, and for other errors in the record and proceedings aforesaid being, the same *R. Cote* prays, that the judgment aforesaid may be reversed, annulled and held as intirely void, and that he may be restored to all things which he hath lost by reason of the said judgment, &c. On which *Saturday* next after the morrow of *St. Martin* comes as well the said *Richard* as the said *John* by their attornies aforesaid; upon which the said *Richard* as before says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is manifest error, alledging the errors aforesaid by him the said *Richard* in form aforesaid above assigned, and prays that the judgment aforesaid, for the errors aforesaid and others being in the record and proceedings aforesaid, may be reversed, annulled and held as intirely void, and that he may be restored to all things which he hath lost by reason of the said judgment.

Errors assigned,

The plaintiff counts upon the errors.

In nullo est erratum.

Judgment affirmed.

Errors assigned in England.

judgment, and that the said *John* to the errors aforesaid may rejoin; and that the court of the said lord the king here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters above for error assigned: And the said *J. Lynch* says, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid; and prays likewise, that the court of the said lord the king may proceed to the examination as well of the record and proceedings aforesaid, as of the said matters above for error assigned; and that the judgment aforesaid may be in all things affirmed, &c. And because the court of the said lord the king here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the said lord the king until on the octave of St. *Hillary*, wheresoever, &c. to hear their judgment of and upon the premises, because the court of the lord the king here thereof not yet, &c. On which day before the said lord the king at the king's court come the parties aforesaid by their attornies aforesaid; whereupon the premises being seen, and by the court of the said lord the king here fully understood, and as well the record and proceedings and the judgment thereon, as the said causes for error by the said *R. Coote* above assigned, being diligently examined, and mature deliberation being thereon had, it seems to the court of the said lord the king here, that that record is nothing erroneous; therefore it is considered, that the judgment aforesaid be in all things affirmed, and stand in its whole force and effect, the said causes and matters above for error assigned in any wise notwithstanding: And farther it is considered, that the said *J. L.* do recover against the said *R. C.* 18*l.* 16*s.* sterling, for his costs and damages which he hath sustained by reason of the delay of execution of the judgment aforesaid by pretence of prosecution of the said writ of the said lord the king of error, and the said *J. L.* have thereof execution, &c.

Afterwards, to wit, on *Friday* next after the morrow of St. *Martin* in that same term, before the lord the king at *Westminster* comes the said *R. C.* by *John Lilly* his attorney, and says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, and in the affirmance of the same, there is manifest error, in this, to wit, that by the record of the judgment aforesaid, and of the affirmance of the same, it appears, that the judgment aforesaid in form aforesaid was given and affirmed for the said *J. Lynch* against the said *R. Coote*, when by the law of the land of the said kingdom of *Ireland* that judgment ought to have been given for the said *Richard* against the said *John*; therefore in that it is manifestly erroneous: And this the same *Richard* is ready to verify: Wherefore he prays that the judgment aforesaid, and the affirmance of the same, for that error and others being in the record and proceedings aforesaid, may be reversed, annulled and held as intirely void; and that the same *R. C.* may be restored to all things that he hath lost by reason

son of the judgment and affirmance aforesaid, &c. and that the said *John* to those errors may rejoin, &c.

And the said *John* by *Jonathan Bolt* his attorney freely here into court comes, and oyer being had of the errors aforesaid, immediately says, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, or in the affirmance of the same judgment, and prays, that the court of the said lord the king here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters above for errors assigned; and that the judgment aforesaid may be in all things affirmed; and because the court, &c.

In nullo est error.

William the third, &c. To our trusty and well beloved *J. Holt*, knt. our ch. just. assigned to hold pleas before us greeting: Because in the record and proceedings of a certain plea which was in our court and of the lady *Mary* the late queen of the common bench in our kingdom and of the said late queen of *Ireland*, before *Richard Pyne*, kt. and his companions then our justices and of the said late queen of the same court, by our writ and of the said late queen, and also in the rendition of the judgment of the same plea which was in our court of common bench aforesaid between *John Lynch*, gent. and *Richard Coote*, esq; for certain trespass and ejectment on the same *John* by the said *Richard* committed, which said record and proceedings, by reason of error happening before us in our said kingdom of *Ireland*, we caused to be brought, and the judgment thereof before us in our kingdom of *Ireland* was affirmed, and thereupon the said record and proceedings, by reason of error happening, we caused to be brought before us in *England*, and the judgment thereof before us in *England* is affirmed, as it is said a manifest error hath happened, to the great damage of the said *Richard*, as by his complaint we have understood: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment in the common bench in our kingdom of *Ireland* and in our court before us in *England* be affirmed, then the record and proceedings aforesaid, with all things touching them, to us in our present parliament you distinctly and openly without delay send, and this writ, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein, with the assent of the lords spiritual and temporal being in the same parliament, to correct that error, what of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness ourself at *Westminster* 26th day of *January* in the 9th year of our reign.

The writ of error in parliament.

[277]

S. Terry.

The answer of John Holt knt. the chief justice within named:

The record and proceedings of the plea whereof mention is within made, with all things touching them, to the lord the king within named in the present parliament with my proper hands I

H h 2

have

have produced in a certain record to this writ annexed, as I am within commanded.

J. Holt.

Pleas before the lord the king at Westminster of Michaelmas term in the 8th year of the reign of the lord William the third, now king of England, &c. Roll 347.

Judgment affirmed.

3 H. 7. c. 13.

Assignment of errors.

ON which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid: Whereupon all and singular the premisses being seen, and by the court of the said lord the king now here more fully understood, and as well the record and proceedings aforesaid, and the judgment upon the same given, as the said causes and matters by the said *Richard Cote* for error assigned, being diligently examined and inspected, because it seems to the court of the lord the king now here, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, and that the said record is in no wise vitious or defective: It is considered, that the judgment aforesaid be in all things affirmed, and stand in its full force and effect, the said causes and matters for error assigned in any wise notwithstanding: And farther it is considered by the court of the said lord the king here, that the said *John Lynch* do recover against the said *Richard Cote* 44*l.* to the same *John Lynch* by the court of the lord the king now here, according to the statute in such case made and provided, adjudged for his costs, charges and damages, which he hath sustained by reason of the delay of execution of the judgment aforesaid by pretence of prosecuting the said writ of error; and that the said *John Lynch* have thereof execution, &c.

Afterwards, to wit, the fourth day of *March* in the 10th year of the reign of the lord *William the third*, now king of *England*, &c. comes the said *R. Cote* by *J. Lilly* his attorney and says, that in the record and proceedings aforesaid, and also in the rendition of judgment in the several affirmances of the judgment aforesaid in the record aforesaid mentioned, there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid by the said court of the said lord the king before the king himself at the king's court in the kingdom of *Ireland*, and also by the said court of the said lord the king before the king himself in *England*, is in all things affirmed, when no such affirmance of the judgment aforesaid thereon ought to have been given; therefore in that there is manifest error: And he prays that the judgment aforesaid for those errors and others being in the record and proceedings aforesaid may be reversed, annulled and held as intirely void; and that he to all things, which by reason of the judgment aforesaid he hath lost, may be restored; and that the said *John Lynch* to the errors aforesaid may rejoin, &c.

Edward Northey.

And the said *John* says, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid: And prays likewise that the court of parliament now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid by the said *Richard Coote* above for error assigned; and that the judgment aforesaid may be in all things affirmed.

Carthew.

Saunders and Owen.

[278]

March 1698.

AND upon this before the lord the king and the peers of this kingdom of *England* in parliament at *Westminster* in the county of *Middlesex* assembled comes the said *Philip Owen* by *R. Hardisty* his attorney and says, that in the record and proceedings of the reversal and annulling of the judgment aforesaid on the first writ of error there is manifest error, in this, to wit, that the judgment aforesaid by the court of the said lord the king before the king himself on the first writ of error was reversed and annulled, when by the law of this kingdom of *England* that judgment ought to have been in all things affirmed; and therefore in that there is manifest error: And the said *Philip* prays that the reversal and annulling of the judgment aforesaid, for that error and others being in the record and proceedings of the reversal and annulling of the same judgment, may be reversed, annulled and held as intirely void; and that the said first judgment may be in all things affirmed; and that he may be restored to all things which he hath lost by reason of the reversal and annulling of the same; and that the said *R. Saunders* to the error aforesaid may rejoin, &c.

Error assigned in parliament on the reversal of a judgment in C. B.

And the said *R. Saunders* by *John Jones* his attorney before the said lord the king and the peers in the present parliament of *England* at *Westminster* in the county of *Middlesex* assembled likewise comes and says, that there is no error in the record and proceedings of the reversal and annulling of the judgment aforesaid on the first writ of error aforesaid reversed and annulled; and prays that the lord the king and the peers in the present parliament of *England* at *Westminster* in the county of *Middlesex* aforesaid assembled now here may proceed to the examination as well of the record and proceedings of the reversal and annulling of the judgment aforesaid on the first writ of error, as of the matter aforesaid above for error assigned; and that the judgment of reversal and annulling of the judgment aforesaid on the first writ of error aforesaid may be in all things affirmed, &c.

Joinder in error.

*Winchurſt and others againſt Belwood and others.**Hill. 3 & 4 Jac. Roll 420.*Writ of error to
reverse a fine.Summons and
severance.

WRits were directed as in *Cock and Ball*, and the laſt writ was to the *custos brevium*, that he ſhould ſend the tranſcript of the ſaid fine, with all things touching it, &c. and *G. W.* and *J.* his wife by *W. Turbill* their attorney come, and *R. S.* and *T. S.* ſolemnly called do not come; and *G. W.* and *J.* his wife ſay, that in the record and proceedings aforeſaid, and alſo in the levying of the fine aforeſaid, there is manifeſt error; and they pray a writ of the ſaid lord the king to ſummon the ſaid *R. S.* and *T. S.* to be before the lord the king to proſecute the writ of error aforeſaid, and to aſſign errors being in the record and proceedings aforeſaid, as alſo in the levying of the fine aforeſaid, together with the ſaid *G. W.* and *J.* his wife; and it is granted them; whereby the ſheriff is commanded, that he ſummon the ſaid *R. S.* and *T. S.* that they be before the lord the king on the octave of the purification, whereſoever, &c. to proſecute, together with the ſaid *G.* and *J.* the writ of error aforeſaid in form aforeſaid, if, &c. and farther, &c. The ſame day is given to the ſaid *G.* and *J.* &c. On which day before the lord the king at *Weſtmiſter* come the ſaid *G.* and *J.* by their attorney aforeſaid, and the ſaid ſheriff, to wit, *H. B.* returns, that by *H. B.* and *O. D.* good, &c. he had ſummoned the ſaid *R. S.* and *T. S.* to be before the lord the king, according to the command of the writ aforeſaid, as he, &c. which ſaid *R. S.* and *T. S.* being on the fourth day of plea ſolemnly called, come in their proper perſons and offer themſelves ready to proſecute the writ of error aforeſaid, together with the ſaid *G.* and *S.* and to aſſign errors in the record and proceedings aforeſaid, and alſo in the levying of the fine aforeſaid; whereupon the ſaid *G.* and *J.* *R. S.* and *T. S.* ſay (*and ſo they aſſign errors*) and pray a writ of the lord the king to warn *R. B.* and *S. B.* (the defendants) and alſo all the tenants of the lands aforeſaid, that they be before the lord the king, &c. to hear the record and proceedings aforeſaid, and to answer to the errors aforeſaid; and it is granted them; whereby the ſheriff is commanded, that, &c. to answer to the errors aforeſaid: The ſame day is given to the plaintiffs: On which day come the ſaid plaintiffs by their attorney aforeſaid, and the ſaid *R. S.* and *T. S.* in their proper perſons, and a *ſci' fac'* returned to the defendants and tenants; and the defendants, to wit, *R. B.* and *T. M.* being ſolemnly called likewise come, to wit, *R. B.* in his proper perſon, and the ſaid *T. M.* by *A. B.* his attorney; and upon this the ſame *T. M.* by proteſting that he was not ſummoned, for plea prays judgment of the writ of error in form aforeſaid obtained, becauſe he ſays, that by that writ obtained, and pleads the death of the plaintiffs who had the eſtate; and alſo he ſays, that one of the plaintiffs in the writ of error, and return'd tenant, ought not to be plaintiff and

and defendant, being incompatible and absurd: And this, &c. Wherefore, for that the said writ of error against him the said R. and the said T. S. is obtained in the name and to the damage of the said R. S. and for that he is thereto become a defendant, the same T. M. prays judgment of the said writ, and that the writ may be quashed: And the said Roger Belwood says, that the said Richard Stock, Thomas Stavely, George Winch and Jane his wife, the said writ of error against him the said Roger and the said Thomas Mosely ought not to have or maintain, because he says, that after the levying of the fine aforesaid, and before the prosecution of the writ of error aforesaid, to wit, 1 Aug. 2. Jac. the said Thomas Stavely by his certain writing of release made at H. aforesaid, sealed with the seal of the said Thomas Stavely, and here in court, &c. and so pleads the release: And this, &c. Wherefore he prays that the fine aforesaid may be affirmed.

And the said Richard Stock (returned tenant) as to this, that he is tenant, &c. with the appurtenances returned, says, that he is not, nor on the day of the issuing of the writ of *scire facias* aforesaid, nor ever after, was tenant of the tenements, or of any, &c. as of freehold, but one George Jackson is, and the day, &c. was thereof tenant as of freehold: And this, &c. Wherefore for as much as he, together with the said Thomas Stavely, and George Winch and Jane, is plaintiff in the said writ of error, he prays a writ, &c. to warn the said George Jackson to hear the record and to answer to the errors aforesaid, &c. Stavely, Winch and his wife imparl until the morrow of Trinity, wheresoever, &c. to reply: And the same day is given to them and to Richard Stock. On which day before, &c. come the said Thomas Stavely and Jane, late the wife of George Winch, now Jane Winch, widow, by W. T. their attorney; and the said Richard Stock and Roger Belwood in their proper persons, as also Thomas Mosely by his attorney aforesaid: And the said Thomas Stavely and Jane Winch say, that the said Geo. Winch after the last continuance of the said writ of error, to wit, after the said five weeks of Easter and before this day, to wit, the said morrow of the Holy Trinity, until which day, &c. to wit, the 4th day of June, at, &c. died: And because the said Richard Stock, Roger and Thomas Mosely do not deny it, but grant it to be true, therefore it is considered, that the writ of error be quashed, &c. Whereupon the said Thomas Stavely and Jane Winch pray leave to purchase a new writ of error of and upon the premisses of record before the lord the king now remaining; and it is granted them: Afterwards, to wit, in Easter term in the 2d year of William and Mary, the same lord the king and queen sent another writ of error of and upon the premisses, directed to their said justices assigned to hold pleas before them, &c. which follows in these words, to wit, William, &c.

Afterwards, to wit, on Friday next after the morrow of the Holy Trinity then next following, before, &c. comes the said Jane W. by her attorney aforesaid; and the said Thomas Stavely,

altho' solemnly called, doth not come; whereupon the same *Jane* says, that, &c. there is manifest error; and prays a writ to summon *Stavely* to be before, &c. three weeks of *Trinity*, &c. The same day is given to the said *Jane*, &c. On which day before, &c. comes the said *Jane* by her attorney aforesaid; and the summons returned; which said *Thomas Stavely* by *C. Yates* his attorney offered himself ready to prosecute and assign errors; and hereupon the said *Thomas Stavely* and *Jane* say, that the said *R. Stock* and *Jane* his wife (as before in the bar) and death, and assign errors, as above, may be restored; and pray a writ to warn *Belwood* and *Mosely*, and the tertenants, returnable *tres Mich'*: The same day is given to *Stavely* and *Jane*, &c. And the sheriff hath not returned the writ: Therefore as before in the octave of *St. Hillary*: And then summons returned of *Belwood* and *Mosely*, and *Stock* the tertenants; and they so summoned come, and pray oyer of the writ of *scire facias* aforesaid; and of the return thereof; and they are read in these words; which being read, the same *Mosely* protests that he was not summoned, for plea he pleads and prays judgment of the writ of error last issued, because he says, that it doth not appear by the same writ of error, who or which of the said *R. Belwood*, *Thomas Mosely* and *R. Stock* or *Jane* his wife, were or was plaintiff of and in the fine aforesaid, and who or which of them were deforceants of the tenements in the same fine specified, as by the same writ ought to appear; wherefore he prays judgment of that writ, and that it may be quashed,

Belwood pleads a release of errors as before,—*Stock* pleads non-tenancy, that *Jackson* is tenant.—Plaintiff impails to *Michaelmas* term: On which day *Winch* demurs to *Mosely's* plea.—She after demurs to *Belwood's* plea, may be restored; and demurs also to *Stock's* plea, may be restored.—*Stavely* demurs to *Mosely's* plea,—and to *Belwood's* pleads *non est factum*;—and as to *Stock's* plea, to the *scire facias* cannot deny but it is good in law; and farther confesseth, that well and true it is, that *Stock* is not, but that *Jackson* was tenant; and prays that the writ aforesaid may be quashed; and she may have a writ to summon *Jackson*.—*Mosely* joins in demurrer, and so doth *Belwood*.—And she to the plea of *Jane* joins in demurrer.

[280]

Pemberton: As to the release he is a coparcener, and one cannot release to the other; there is no privity; *quod cur' concessit*: We have replied severally where it ought to be jointly, and this without leave of the court, 29 *Aff.* 35. *Cur'* thought they might sever, if they agree to assign error without summons and severance; and grant the case of the 29 *Aff.* And that if the defendant in error had pleaded pleas several in their natures, the plaintiffs might well reply severally of course, *Et per* chief justice: Where one pleads a covinous matter, this may be examined in court, and if it be found fraud, we may sever.

Ball

*Ball versus Cock.**Hill. 1 & 2 Jac. 2. Roll 546.*

England, to wit. **T**HE lord the king hath sent to his beloved *Francis Lane*, esq; his chirographer of the bench, his writ close in these words, to wit, *James* the second, by the grace of God, &c. To our beloved *Francis Lane*, esq; our chirographer of the bench, greeting: Because in the record and proceedings, as also in the levying of a certain fine in our court of the bench at *Westminster* from the day of the Holy Trinity in three weeks in the first year of our reign, before *Thomas Jones*, knt. our chief justice of the bench, and *Job Charleton*, *Creswell Levinz* and *Thomas Street* his companions, then our justices of the bench aforesaid, and others our faithful subjects there then present, by our writ between *John Cox*, gent. and *Thomas Axe*, gent. plaintiffs, and *Nathaniel Cox*, gent. and *Sarah* his wife deforceants of the 3d part of the rectory of *Madderne Parva* and *Penzance* with the appurtenances, and of all and all manner of tithes yearly arising, growing and renewing in *Madderne Parva* and *Penzance* in the county of *Cornwall*; and by our other writ between the said *John Cox*, gent. and *Thomas Axe*, gent. plaintiffs, and the said *Nathaniel Cox*, gent. and *Sarah* his wife, of the 3d part of eight messuages with the appurtenances in the parish of *St. Mary Magdalen*, *Milkstreet* in *London*, a manifest error hath happened, to the great damage of *John Ball*, gent. son and heir of the said *Sarah*, as by his complaint we have understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the said *John Ball* in this behalf, command you, that the transcript of the note of the fine aforesaid and of the writs of covenant, with all things touching them which are in your custody, as it is said, to us under your seal you distinctly and openly send, and this writ; so that we may have them on the octave of *St. Hillary*, wheresoever we shall then be in *England*, that the transcript aforesaid being inspected, we may farther cause to be done therein what of right and according to the custom of our kingdom of *England* shall be to be done. Witness ourself at *Westminster* the 4th day of *January* in the 1st year of our reign.

Error to reverse a fine.

Santhey.

The answer of the within named Francis Lane, esq; chirographer of the lord the king of the bench, to this writ:

The transcript of the note and of the writs of covenant of the fine within specified, with all things touching them which are in my custody, to the lord the king under my seal I distinctly and openly send, as I am within commanded. The residue of this writ appears in a certain schedule to this writ annexed.

The return.

James

The writ of covenant.

James the second, by the grace of God of England, Scotland, France and Ireland king, defender of the faith, &c. To the sheriff of Cornwall, greeting: Command Nathaniel Cox and Sarah his wife that they justly and without delay perform to John Cox, gent. and Thomas Axe, gent. the covenant between them made of the third part of the rectory of *Madderne Parva* and *Penzance* with the appurtenances, and of all and all manner of tithes yearly arising, growing and renewing in *Madderne Parva* and *Penzance* and unless they shall do it, and the said John and Thomas shall make you secure of prosecuting their suit, then summon by good summoners the said Nathaniel and Sarah, that they be before our justices at *Westminster* from the day of the Holy Trinity in three weeks, to shew why they have not done it: And have there the summons, and this writ. Witness ourself at *Westminster* 19th day of June in the first year of our reign. *Hungenford* for half mark paid for a fine, by J. Potenger for the fine, because it is affirmed that the within tenements do not exceed 3*l.* per annum. J. Potenger. Pledges to prosecute John Doe and Richard Roe. Summoners John Den and Richard Fen. Fine 6*s.* 8*d.* Pere Bertie, Edward Courthorp, Trinity the 1st of king James the second, Roll 4. Richard Edgecombe, knt. sheriff, 3*l.*

[281]
The writ of covenant.

James the second, by the grace of God, &c. To the sheriffs of London, greeting: Command Nathaniel Cox, gent. and Sarah his wife, that they justly and without delay perform to John Cox, gent. and Thomas Axe, gent. the covenant between them made of the 3d part of eight messuages with the appurtenances in the parish of St. Mary Magdalen, Milk-street: And unless they shall do it, and the said John and Thomas shall make you secure of prosecuting their suit, then summons by good summoners the said Nathaniel and Sarah, that they be before our justices at *Westminster* from the day of the Holy Trinity in three weeks, to shew why they have not done it; and have there the summoners, and this writ. Witness ourself at *Westminster* 19th day of June in the 1st year of our reign. *Shelbery* for 20*s.* paid for a fine, by J. Potenger for the fine, because it is affirmed that the within tenements do not exceed the value of 10*l.* per ann'. J. Potenger. Pledges to prosecute John Doe and Richard Roe. Summoners John Den and Richard Fenn. Fine 20*s.* Pere Bertie, Edward Courthorp, Trinity the 1st of king James the second, Roll 4. The answer of William Goslin, knt. Peter Vandeput, knt. sheriffs, 10*l.*

Between John Cox, gent. and Thomas Axe, gent. plaintiffs, and Nathaniel Cox, gent. and Sarah his wife, defendants, of the 3d part of the rectory of *Madderne Parva* and *Penzance* with the appurtenances, and of all and all manner of tithes yearly coming, growing and renewing in *Madderne Parva* and *Penzance* in the county of Cornwall, and of the 3d part of eight messuages with the appurtenances in the parish of St. Mary Magdalen, Milk-street in London, whereof a plea of covenant was summoned between them, &c. to wit, that the said Nathaniel

acknow-

acknowledges the said third parts with the appurtenances to be the right of the said *John*, as those which the same *John* and *Thomas* have of the gift of the said *Nathaniel* and *Sarah*, and those they have released and quitted claim from them the said *Nathaniel* and *Sarah* and their heirs to the said *John* and *Thomas* and to the heirs of the said *John* for ever: And moreover the same *Nathaniel* and *Sarah* have granted for themselves and the heirs of the said *Sarah*, that they will warrant to the said *John* and *Thomas*, and the heirs of the said *John* the said 3d parts with the appurtenances, against the said *Nathaniel* and *Sarah* and the heirs of the said *Sarah* for ever: And for this, &c. the same *John* and *Thomas* have given to the said *Nathaniel* and *Sarah* 260*l.* sterling, *Cornwall*, *London*, from three weeks of the Holy Trinity in the first year of the reign of *James* the second, by the grace of God, &c. from the conquest: The ingrossment of the proclamations according to the form of the statute; the 1st proclamation was made 28th day of *July* in *Trinity* term in the 1st year of the king within written, the 2d proclamation was made the 3d of *November* in *Michaelmas* term in the 1st year of the king within written.

1 R. 3. c. 7.

Francis Lane.

The lord the king hath sent to his trusty and well beloved *Thomas Jones*, knt. his chief justice of the bench, his writ close in these words, to wit, *James* the second, by the grace of God, &c. To our trusty and well beloved *Tho. Jones*, knt. our chief justice of the bench, greeting: Because in the record and proceedings, and also in the levying of a certain fine in our court of the bench at *Westminster*, from the day of the Holy Trinity in three weeks in the 1st year of our reign, before you *Job Charlerton*, *Creswell Levinz* and *Tho. Street* your companions, then our justices of the bench aforesaid, and others our faithful subjects there then present, by our writ between *John Cox*, gent. and *Thomas Axe*, gent. plaintiffs, and *Nathaniel Cox*, gent. and *Sarah* his wife, deforceants, of the 3d part of the rectory of *Madderne Parva* and *Penzance* in the county of *Cornwall*, and by our other writ between the said *John Cox*, gent. and *Thomas Axe*, gent. and the said *Nathaniel Cox*, gent. and *Sarah* his wife, of the 3d part of eight messuages with the appurtenants in the parish of *St. Mary Magdalen*, *Milk-street* in *London*, a manifest error hath happened, to the great damage of *John Ball*, gent. son and heir of the said *Sarah*, as by his complaint we have understood: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the said *John Ball* in this behalf, command you, that the record and proceedings of the fine aforesaid, with all things touching them, which are in your custody as it is said, to us under your seal you distinctly and openly send, and this writ, so that we may have them on the octave of *St. Hillary*, wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther

Writ of error to the C. J. to certify the same fine.

ther cause to be done therein to correct that error what of right and according to the law and custom of our kingdom of *England*, shall be to be done. Witness ourself at *Westminster* 4th day of *January* in the 1st year of our reign.

Santhey.

The answer of Thomas Jones, knt. the chief justice within named:

The return.

The record and proceedings of the fine whereof mention is within made, with all things touching them, before the lord the king, wheresoever, &c. on the day within contained, I send in a certain record to this writ annexed, as I am within commanded.

Tho. Jones.

[282] *Pleas of land inrolled at Westminster before Thomas Jones, knt. and his companions, justices of the lord the king of the bench, of Trinity term in the 1st year of the reign of the lord James the second, by the grace of God of England, Scotland, France and Ireland king, defender of the faith, &c. Roll 155.*

Licentia concordandi.

Cornwall, to wit. *John Cox*, gent. gives the lord the king 40s. for leave to agree with *Nathaniel Cox*, gent. and *Sarah* his wife, in a plea of covenant of the 3d part of the rectory of *Madderne Parva* and *Penzance* with the appurtenances, and of all manner of tithes yearly coming, growing and renewing in *Madderne Parva* and *Penzance* in the county of *Cornwall*, and of the 3d part of eight messuages with the appurtenances in the parish of *St. Mary Magdalen, Milk-street* in *London*; and he hath it by the court for peace admitted before *Creswell Levinz*, knt. justice, in his proper person.

Writ of error directed to the *cujus brevium.*

The lord the king hath sent to his beloved *William Thursby*, esq; keeper of his writs of the bench, his writ close in these words, to wit, *James* the second, by the grace of God of *England, Scotland, France* and *Ireland* king, defender of the faith, &c. To our beloved *William Thursby*, esq; the keeper of our writs of the bench, greeting: Because in the record and proceedings, as also in the levying of a certain fine in our court of the bench at *Westminster* from the day of the Holy *Trinity* in three weeks in the first year of our reign, before *Thomas Jones*, knt. chief justice of our bench, and *Job Charleton*, *Creswell Levinz* and *Thomas Streete* his companions, our justices of the bench aforesaid, and others our faithful subjects there then present, by our writ between *John Cox*, gent. and *Thomas Axe*, plaintiffs, and *Nathaniel Cox*, gent. and *Sarah* his wife, deforceants, of the 3d part of the rectory of *Madderne Parva* and *Penzance* with the appurtenances, and of all and all manner of tithes yearly coming, growing and renewing in *Madderne Parva* and *Penzance* in the county of *Cornwall*, and by our other writ between the said *John Cox*, gent. and *Thomas Axe*, and the said *Nathaniel Cox*, gent. and

and *Sarah* his wife, of the 3d part of eight messuages with the appurtenances in the parish of *St. Mary Magdalen Milk-street* in *London*, a manifest error hath happened, to the great damage of *John Ball*, son and heir of the said *Sarah*, as by his complaint we have understood: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the same *John Ball* in this behalf, command you that the transcript of the foot of the fine aforesaid, with all things touching it which are in your custody, as it is said, to us under your seal you distinctly and openly send, and this writ, so that we may have them on the octave of *St. Hillary*, wheresoever we shall then be in *England*, that the transcript aforesaid being inspected, we may farther cause to be done therein to correct that error what of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness ourself at *Westminster* the 4th day of *January* in the 1st year of our reign.

Santhey.

The answer of William Thursby, esq; the keeper of the writs within named :

The transcript of the foot of the fine whereof mention is within made, with all things touching it as they are in my custody, to the lord the king I distinctly and openly send according to the command of this writ, as appears in the schedule to this writ annexed, as I am within commanded. *W. T. 18 January 1685.*

The return.

James the second, by the grace of God of *England, Scotland, France and Ireland* king defender of the faith, &c. To our trusty and well beloved *Creswell Levinz*, knt. one of our justices of the bench, greeting : Whereas by our writ of covenant between *John Cox*, gent. and *Thomas Axe*, gent. and *Nathaniel Cox*, gent. and *Sarah* his wife, of the 3d part of the rectory of *Madderne Parva* and *Penzance* with the appurtenances, and of all and all manner of tithes yearly coming, growing and renewing in *Madderne Parva* and *Penzance* in the county of *Cornwall*; and by our other writ of covenant between the said *John* and *Thomas* and the said *Nathaniel* and *Sarah*, of the 3d part of eight messuages with the appurtenances in the parish of *St. Mary Magdalen* in *Milk-street* in *London*, depending before you and your companions our justices of the bench, to levy the fines thereof between them before you and your companions aforesaid in the bench aforesaid, according to the law and custom of our kingdom of *England*; and the same *Nathaniel* and *Sarah* are, as we have understood, so weak that they are not able to travel to *Westminster* on the days in our said writs contained, to make the cognizances which in this behalf are required, without great danger of their lives : We compassionating the condition of the said *Nathaniel* and *Sarah* in this behalf, have given you power to receive the

The dedimus.

the cognisances which the said *Nathaniel* and *Sarah* before you will make of the premisses; and therefore we command you, that personally going to the said *Nathaniel* and *Sarah* you receive their cognisances aforesaid, and when you have received them distinctly and openly certify your said companions thereof, that then those fines between the parties aforesaid, of the premisses aforesaid before you and your companions aforesaid of the bench aforesaid, may be levied, according to the law and custom aforesaid, and have there then this writ. Witness ourself at *Westminster* the 20th day of *June* in the 1st year of our reign. *Hungerford*. By the lord keeper of the great seal of *England*, at the prayer of the plaintiffs. G. C. S.

The answer of Creswell Levinz, knt. to this writ :

The concord.

And the concord is such, that the within named *Nathaniel* and *Sarah* acknowledge the third parts within written with the appurtenances to be the right of the within named *John* and *Thomas*, as those which the same *John* and the within named *Thomas* have of the gift of the said *Nathaniel* and *Sarah*, and those they have released and quitted claim from them the said *Nathaniel* and *Sarah* and their heirs to the said *John* and *Thomas* and the heirs of the said *John* for ever : And moreover the same *Nathaniel* and *Sarah* have granted for themselves and the heirs of the said *Sarah*, that they will warrant to the said *John* and *Thomas* and to the heirs of the said *John* the said third parts with the appurtenances, against the said *Nathaniel* and *Sarah* and the heirs of the said *Sarah* for ever : And for this, &c. Taken and acknowledged the 30th day of *July* in the first year of the reign of our lord *James* the second, now king of *England* before me *Creswell Levinz* ; proclaimed *Trinity* the 1st of king *James* the second. Rec^d 13 s. 4d.

The fine.

Ad. Colclough : This is the final concord made in the court of the lord the king at *Westminster* from the day of the Holy *Trinity* in three weeks, in the 1st year of the reign of *James* the second, by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. from the conquest, before *Thomas Jones*, *Job Charleton*, *Creswell Levinz* and *Thomas Street*, and others of the king's faithful subjects then there present, between *John Cox*, gent. and *Thomas Axt*, gent. plaintiffs, and *Nathaniel Cox*, gent. and *Sarah* his wife, deforceants, of the 3d part of the rectory of *Madderne Parva* and *Penzance* with the appurtenances, and of all and all manner of tithes yearly coming, growing and renewing in *Madderne Parva* and *Penzance* in the county of *Cornwall*, and of the third part of eight messuages with the appurtenances in the parish of *St. Mary Magdalen Milk-street* in *London*, whereof a plea of covenant was summoned between them in the same court, to wit, that the said *Nathaniel* and *Sarah* acknowledge the said third parts with the appurtenances to be the right of him the said *John*, as those which the same *John* and *Thomas*

Thomas have of the gift of the said *Nathaniel* and *Sarah*, and those they have released and quitted claim from them the said *Nathaniel* and *Sarah* and their heirs to the said *John* and *Thomas* and the heirs of the said *John* for ever: And moreover the said *Nathaniel* and *Sarah* have granted for themselves and the heirs of the said *Sarah*, that they will warrant to the said *John* and *Thomas* and to the heirs of the said *John* the said 3d parts with the appurtenances against the said *Nathaniel* and *Sarah* and the heirs of the said *Sarah* for ever: And for this recognizance, release, quit-claim, warranty, fine and concord, the same *John* and *Thomas* have given to the said *Nathaniel* and *Sarah* 260 l. sterling, *Cornwall*, *London*, according to the form of the statute; the 1st proclamation was made the 8th day of *July* in *Trinity* term the 1st year of the reign of the king within written; the 2d proclamation was made the 10th day of *November* in *Michaelmas* term in the 1st year of the king within written.

1 R. 3. c. 7.

Afterwards, to wit, on *Saturday* next after the octave of *St. Hillary* in that same term, before the lord the king at *Westminster* comes the said *John Ball* by *John Lilly* his attorney and says, that the said *Nathaniel Cox* and *Sarah* his wife in the fine aforesaid named, at the time of the levying of the fine aforesaid were seised of the said third parts of the tenements aforesaid with the appurtenances in their demean as of fee in the right of the said *Sarah*: And the said *John Ball* farther says, that he is, and at the time of the death of the said *Sarah* deceased was, the son and heir of the same *Sarah*; and that in the record and proceedings aforesaid, and also in the levying of the fine aforesaid, there is manifest error, in this, to wit, that the said *Sarah* in the fine aforesaid named, after the cognizance thereof on the said writs of covenant before the said *Creswell Levinz*, knt. as aforesaid made, and before the inolment and recording of the silver and money of the said lord the king for leave to agree between the parties aforesaid, according to the tenor, form and effect of the fine and concord aforesaid at *London* aforesaid, to wit, in the parish of *St. Mary Magdalen Milk-street* in the ward of *Cripplegate Without*, died: And this he is ready to verify: Wherefore he prays judgment, and that the fine aforesaid may be reversed, annulled and held as intirely void, and that he the same *J. Ball* may be restored to all things which he hath lost by reason of that fine: And the same *J. Ball* prays several writs of the said lord the now king, to wit, one writ to the sheriff of the county of *Cornwall*, and another writ to the sheriffs of *L.* to be directed, to summon the said *John Cox* and *Thomas Axe*, and the several tenants of the tenements aforesaid to be before the lord the king to hear the record, proceedings and transcript aforesaid, and to answer to the errors aforesaid; and they are granted him, &c. whereby as well the sheriff of the county of *Cornwall* as the sheriffs of *London* aforesaid are commanded, that by good, &c. they give notice to the said *John Cox* and *Thomas Axe* and the several tenants of the tenements aforesaid, that they be before the said lord the king from

Errors assigned, that the cognizors were seised in the right of the w.f.s. who died before the king's silver paid.

[284]

Several writs of *scire facias* awarded.

The sheriffs of
London return a
scire feci.

Nihil return'd
by the sheriff of
Cornwall.

An alias scire
facias.

from the day of *Easter* in 15 days, wheresoever, &c. to hear the record and proceedings and transcript aforesaid, and to answer to the errors aforesaid, if, &c. and farther, &c. The same day is given to the said *John Ball*: On which day *Benjamin Thorogood*, knt. and *Thomas Kinsey*, knt. sheriffs of *London* aforesaid have return'd, that by virtue of the writ aforesaid to them directed, by *James Bickerstaffe* and *John Doe*, good and lawful men of their bailiwick, they had given notice to the said *Nathaniel Cox*, gent. tenant of the messuages aforesaid with the appurtenances, that he should be before the lord the king on the day aforesaid, wheresoever, &c. to hear the record, proceedings and transcript aforesaid, and farther to do and receive as the writ aforesaid in itself commanded and required: And they have farther certified, that there are not, nor is any other tenants or tenant of the messuages aforesaid in their bailiwick to whom they could give notice: And they have farther returned, that the said *Thomas Cox* and *Thomas Axe* had nothing, nor had either of them any thing, in their bailiwick whereby they could give notice to them or either of them, nor were they found, nor was either of them found in the same: And on the same day *Jonathan Rasbleigh*, esq; sheriff of the county of *Cornwall* hath returned, that by virtue of the writ aforesaid to him directed by *Reginald Hawkey* and *John Doe*, good and lawful men of his bailiwick, he had given notice to *Nathaniel Cox*, gent. tenant of the rectory and tithes aforesaid, that he should be before the lord the king on the day aforesaid, wheresoever, &c. to hear the record, proceedings and transcript aforesaid, and farther to do and receive as the writ aforesaid in itself commanded and required: And he hath farther certified to the said lord the king, that there are not, nor is any other tenants or tenant of the rectory and tithes aforesaid in his bailiwick to whom he could give notice; and he hath farther returned, that the said *John Cox* and *Thomas Axe* had nothing, nor had either of them any thing, in his bailiwick whereby he could give notice to them or either of them, nor were they found, nor was either of them found in the same: And the said *John Cox* and *Thomas Axe* have not come, nor hath either of them come: Wherefore, as before, as well the sheriff of *Cornwall* as the sheriffs of *London* are commanded that by good, &c. they give notice to the said *John Cox* and *Thomas Axe*, that they be before the lord the king on the morrow of the Holy *Trinity*, wheresoever, &c. to shew in form aforesaid, if, &c. and farther, &c. The same day is given to the said *John Ball*, &c. And the said *Nathaniel* so summoned to the said several writs of *scire facias* in *London*, on the 4th day of plea, by *William Turbill* his attorney comes; whereupon the said *John Ball* as before says, that in the record and proceedings aforesaid, and also in the levying of the fine aforesaid there is manifest error, alledging the errors aforesaid by him above in form aforesaid alledged, and prays that the fine aforesaid, for that error and others being in the proceedings aforesaid, may be reversed, annulled and held as intirely void; and that the said *John Cox*

Cox and *Thomas Axe* to the errors aforesaid may rejoin: And the said *Nathaniel* says, that the said *Sarah*, on the said three weeks of the Holy *Trinity* in the first year of the reign of the said lord the now king aforesaid, on which day the fine aforesaid was levied, as also during the whole term of the Holy *Trinity* aforesaid in the 1st year of the reign of the said lord the now king aforesaid, in which term the said money given to the said lord the now king for the said leave to agree was inrolled and entered of record, was surviving and in full life, to wit, at *London* aforesaid in the said parish of *St. Mary Magdalen Milk-street* in the ward of *Cripplegate Within*: And this he is ready to verify: Wherefore he prays judgment, and that the fine aforesaid may be in all things affirmed and remain in its full force and effect.

The cognizor pleads, that his wife was alive all *Trinity* term.

And the said *John Ball* says, that the said *Trinity* term in the 1st year of the reign of the said lord the now king aforesaid began on the 15th day of *June* and ended the 8th day of *July* in the 1st year aforesaid, and that after the same 15th day of *July*, to wit, on the 30th day of the same month of *July* in the 1st year aforesaid, the acknowledgment of the fine aforesaid on the said writs of covenant by the said *Nathaniel* and *Sarah* in the fine aforesaid named before the said *Creswell Levinz*, knt. as aforesaid, was made: And the said *John Ball* farther says, that the entry, inrollment and recording of the silver and money of the said lord the king for the said leave to agree, was actually and really made on the 29th day of *August* after the said *Trinity* term in the 1st year aforesaid, and not before the same day; and that the said *Sarah* before the said 29th day of *August* in the 1st year aforesaid, at *London* aforesaid in the parish of *St. Mary Magdalen Milk-street* in the ward of *Cripplegate Within*, died: And this he is ready to verify: Wherefore he prays judgment, and that the fine aforesaid for the error aforesaid may be reversed, annulled and held as intirely void; and that he the same *John Ball* may be restored to all things which he hath lost by reason of the said fine. On which said morrow of the Holy *Trinity* before the lord the king at *Westminster* comes the said *John Ball* by his attorney aforesaid: And the said sheriff of the county of *Cornwall* as before hath returned, that the said *John Cox* and *Thomas Axe* had nothing, nor had either of them any thing in his bailiwick, whereby he could give notice to them or either of them, nor was either of them found in the same; and the said sheriffs of *London* on the same day as before have returned, that the said *John Cox* and *Thomas Axe* had nothing, nor had either of them any thing in their bailiwick, whereby they could give notice to them or either of them, nor were they or either of them found in the same.

Repl. that the term began the 15th of *June*, and ended the 8th of *July*, the cognizance taken the 30th, and the king's silver enter'd the 29th of *August* after the death of the wife.

[285]

The Sheriff of *Cornwall* returns nichil.

And the said *Nathaniel* says, that the said plea of the said *John Ball* in form aforesaid above in replying to the said plea of the said *Nathaniel* pleaded, and the matter in the same contained, are not sufficient in law to reverse or annul the fine aforesaid, and that he the same *Nathaniel*, to that plea in manner

Demurrer to the replication.

and form aforesaid made hath no necessity, nor is by the law of the land obliged in any manner to answer: And this he is ready to verify: Wherefore for want of a sufficient replication in this behalf the same *Nathaniel* as before prays judgment, and that the fine aforesaid may be in all things affirmed and remain in its full force and effect, &c.

Joinder in demurrer.

And the said *John Ball* says, that his plea aforesaid above in replying to the said plea of the said *Nathaniel* pleaded, and the matter in the same contained, are good and sufficient in law to reverse and annul the fine aforesaid: And this the same *John Ball* is ready to verify: Wherefore for that the same *Nathaniel* to the plea aforesaid of the said *John Ball* above in replying pleaded doth not answer, nor the same in any wise deny, the said *John Ball* as before prays judgment, and that the fine aforesaid may be reversed, annulled and held as intirely void; and that he the same *John Ball* may be restored to all things which he hath lost by reason of the said fine.

The cognizees appear and plead to the other scire facias.

And the said *John Cox* and *Thomas Axe* on the same day being solemnly called, by *William Turbill* their attorney, likewise come and say that, the said *Trinity* term in the first year of the reign of the said lord the now king aforesaid began the 15th day of *June* and ended the 8th day of *July* in the first year aforesaid; and that the said *Sarah* on the said three weeks of the Holy *Trinity* in the first year of the reign of the said lord the now king aforesaid, on which day the said fine was levied, as also during the whole term of the Holy *Trinity* aforesaid in the first year of the reign of the said lord the now king aforesaid, in which term the money of the lord the king for leave to agree was inrolled and entered of record, was surviving and in full life, to-wit, at *London* aforesaid in the said parish of *St. Mary Magdalen Milk-street London*, in the ward of *Cripplegate Within*; without that, that the said *Sarah* died before the said three weeks of the Holy *Trinity* in the first year of the reign of the said lord the now king aforesaid, or before the end of the said *Trinity* term in the first year aforesaid: And this they are ready to verify: Wherefore they pray judgment, and that the fine aforesaid may be in all things affirmed and remain in its full force and effect, &c.

Demurrer to the plea.

And the said *John Ball* says, that the said plea of the said *John Cox* and *Thomas Axe* in form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to affirm the said fine, and that he the said *John Ball* hath no necessity, nor is by the law of the land obliged, in any manner to answer to that plea in manner and form aforesaid above pleaded: And this he is ready to verify: Wherefore for want of a sufficient answer in this behalf the same *John Ball* as before prays judgment, and that the fine aforesaid may be reversed, annulled and held as intirely void, and that he the said *John Ball* may be restored to all things which he hath lost by reason of the fine aforesaid.

Joinder in demurrer.

And the said *John Cox* and *Thomas Axe* say, that their plea aforesaid above pleaded, and the matter in the same contained,

are good and sufficient in law to affirm the fine aforesaid: And this the same *John Cox* and *Thomas Axe* are ready to verify: Wherefore for that the same *John Ball* to the plea aforesaid of the said *John Cox* and *Thomas Axe* above pleaded doth not answer, nor hitherto any way deny it, the same *John Cox* and *Thomas Axe* as before pray judgment, and that the fine aforesaid may be in all things affirmed and remain in its full force and effect: And because the court of the lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king until from the day of *St. Michael* in three weeks, wheresoever, &c. to hear their judgment of and upon the premisses, because the court of the said lord the king now here thereof not yet, &c.

Note; *The fine was affirmed Michi. 3. Jac. 2.*

Morris and others and Walker.

[286]

Enter'd Michi. 3. Jac. 2. in the crown-office.

AFTERWARDS, to wit, on *Monday* next after three weeks of *St. Michael* in this same term, before the lord the king at *Westminster* comes the said *Elizabeth Walker*, who prosecutes as well for the lord the king as for herself, by *John Allen* her attorney, and oyer being had of the record and proceedings aforesaid, says, that in the record and proceedings aforesaid, as in the rendition of the judgment aforesaid on the indictment aforesaid in the said court of the said lord king *Charles* the second before the late king himself in his kingdom of *Ireland*, there is manifest error, in this, to wit, that the judgment on the verdict aforesaid was given for the said *Edward Morris*, *Henry Bambrick*, *John Bambrick* and the other persons in the indictment aforesaid named, when by the law of the land judgment on that verdict ought to have been given for the said lord the king against the said *E. M. H. B. J. B.* and the other persons as aforesaid indicted, that they of the trespasses, contempts, riots, routs, force, entries and detentions by force aforesaid should be convicted: And this as well the said *Elizabeth*, who as well, &c. as *R. S. knt.* attorney general of the lord the now king, who prosecutes, &c. are ready to verify: Wherefore they pray that the judgment aforesaid, for that error and others being in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, may be reversed, annulled and held as intirely void; and that the said *Elizabeth* may be restored to all things which she hath lost by reason of the judgment aforesaid; and that the said *E. M. &c.* and the other persons as aforesaid indicted of the trespasses, contempts, riots, routs, force, entries and detentions by force, may be convicted; and that they according to the summons to them as aforesaid given to the errors aforesaid may answer, &c. And the said *E. M. &c.* so as aforesaid summoned

Error assigned by a prosecutor *qui tam* on a judgment on an indictment in *K. B.* in *Ireland*.

In nullo aberratum.

summoned by *John Lilly* their attorney come and say, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid on the indictment aforesaid, and pray likewise, that the court of the said lord the king now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid above for error assigned, and that the judgment aforesaid may be in all things affirmed: And because the court here are not yet advised to give their judgment of and upon the premises, day therefore is given as well to the said *E. W.* who as well, &c. and *R. S. knt.* attorney general of the lord the king who prosecutes, &c. as to the said *E. M. &c.* in the state as now, &c. until *Monday* next after 15 days of *St. Martin* before the lord the king at *Westminster*, to hear their judgment thereon. On which *Monday* next after 15 days of *St. Martin*, before the said lord the king at *Westminster* come as well the said *E. W.* who as well, &c. by her attorney aforesaid, and *R. S. knt.* attorney general of the now lord the king, who prosecutes, &c. in his proper person, as the said *E. M. &c.* by their attorney: And as before the said *E.* by her attorney aforesaid, and the said *R. S. knt.* attorney general of the now lord the king, who prosecutes, &c. pray judgment, and that the judgment aforesaid, for the error aforesaid and others found and being in the record and proceedings aforesaid, may be revoked, annulled and held as entirely void, and that she the said *E.* may be restored to all things which she hath lost by reason of the judgment aforesaid; and that the said *E. M. &c.* of the premises aforesaid may be convicted: Whereupon all and singular the premises being seen and by the court here fully understood, and mature deliberation being thereon had, it is considered, that the judgment aforesaid, by the said justices of the said lord the king assigned to hold pleas before the lord the king in the kingdom of *Ireland* given, be in all things affirmed, and that the record and proceedings aforesaid be remitted; so that such execution and process may be made thereon as according to the law and custom of the kingdom of *Ireland* ought to issue and be made, notwithstanding the writ of error above prosecuted.

Judgment affirmed.

[287]

The Lady Clanrickard and Fitzgerald, knt.

2 Jac. 2. in K. B. Roll 120.

Error in the K. B. in *England* on the affirmance of judgment in *dower* in *Ireland*.

THE lord the king hath sent to his trusty and well beloved counsellor *William Davis*, knt. his chief justice assigned to hold pleas in the court of the said lord the king before the king himself in his kingdom of *Ireland*, his writ close in these words directed, to wit, *James* the second, by the grace of God of *England, Scotland, France and Ireland* king, defender of the faith, &c. To our trusty and well beloved counsellor *William Davis*, knt. our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland*, greeting: Because in the record

record and proceedings, and also in the rendition of the judgment of a plea which was before *James Donelan*, kn^t. and his companions, justices of the lord *Charles* the second our brother, late king of *England*, in the court of the said late king of the bench in his kingdom of *Ireland*, by the writ of him the said late king between *Helen Fitzgerald*, who was the wife of *John Fitzgerald* of *Dromany* in the county of *Waterford* deceased, demandant, and *Catharine Fitzgerald* tenant in a plea of dower, which said record and proceedings, by reason of error happening, the same late king *Charles* the second our brother caused to be brought before him the said late lord the king in our said kingdom of *Ireland*, and the judgment thereof before us is affirmed, and before us in our said kingdom of *Ireland* now remaining, as it is said, a manifest error hath happened, to the great damage of *Edward Fitzgerald*, otherwise *Villars*, and the said *Catharine* the wife of the said *Edward*, as by their complaint we have understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment thereof be given and affirmed before you in our said kingdom of *Ireland*, then the record and proceedings aforesaid, with all things touching them, before us under your seal you distinctly and openly send, and this writ, so that we may have them on the morrow of *St. Martin*, wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein to correct that error what of right shall be to be done; and give notice to the most noble *William* earl *Clanrickard* and the said *Helen* the wife of the said earl, that they be then there to prosecute in the plea aforesaid, and farther to do and receive what our court before us in *England* shall consider in the premises. Witness ourself at *Westminster* the fifth day of *July* in the 2d year of our reign.

Layton.

The record and proceedings of the plea whereof mention is within made, with all things touching them, before the lord the king, wheresoever, &c, at the day and place within contained I send in a certain record to this writ annexed; and I have given notice to the within named *William* earl *Clanrickard* and *Helen* his wife, that they be then there to proceed in the plea aforesaid, as I am within commanded.

The answer of *William Davis*.

Pleas before the lord the king at the king's court of Hillary term in the 36th and 37th year of the reign of our lord Charles the second, by the grace of God of England, Scotland, France and Ireland king, defender of the faith, &c. Witness William Davis.

Savage and Ryves.

Error in K. B.
in Ireland.

THE lord the king hath sent to his trusty and beloved counsellor *John Bealing*, esq; his writ close in these words, to wit, *Charles the second, by the grace of God of England, Scotland, France, and Ireland king, defender of the faith, &c.* To our trusty and well beloved counsellor *John Bealing*, esq; greeting: Because in the record and proceedings, and also in the rendition of the judgment of a plea which was before *James Donelan*, knt. and his companions, our justices of the common bench in our kingdom of *Ireland*, by our writ between *Helen Fitzgerald*, who was the wife of *John Fitzgerald* of *Dromany* in the county of *Waterford* deceased, demandant, and *Catherine Fitzgerald*, tenant in a plea of dower, as it is said, manifest error hath happened, to the great damage of *Edward Fitzgerald*, otherwise *Villars*, and the said *Catharine* the wife of the said *Edward Fitzgerald*, as by their complaint we have understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment thereon be given, then the record and proceedings of the plea aforesaid, with all things touching them, to us under your seal you distinctly and openly send, and this writ, so that we may have them before us on the morrow of the purification of the blessed virgin *Mary*, wheresoever we shall then be in *Ireland*, that, the record and proceedings aforesaid being inspected, we may farther cause to be done therein to correct that error what of right and according to the law and custom of our kingdom of *Ireland* shall be to be done. Witness our well beloved cousin and counsellor *James* duke of *Ormond*, lieutenant general and governor general of our kingdom of *Ireland*, at the king's court 17th day of *January* in the 36th year of our reign.

Allowed *John Bealing*.

By virtue of this writ to me directed, the record and proceedings of a plea, whereof mention is within made, with all things touching them, to the most serene lord the king I humbly send, as I am within commanded.

John Bealing,

Pleas

Pleas at the king's court, &c.

Afterwards, to wit, on *Monday* next after the morrow of *St. Martin* in this same term, before the lord the king at *Westminster* come the said *E. F.* and *C.* his wife by *J. H.* their attorney and say, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid in the said court of our lord *Charles* the second, the late king, of the bench, there is manifest error, in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid in form aforesaid given was given for the said *A.* against the said *K.* when by the law of the land of the said kingdom of *Ireland* that judgment ought to have been given for the said *Catharine* against the said *Helen*; therefore in that it is manifestly erroneous: There is error also in the affirmance of the judgment aforesaid, in this, to wit, that in the record and proceedings in the court of the said lord the late king, called the king's court in the kingdom of *Ireland* aforesaid, by the writ of error of the said late lord the king removed, and in the court of the lord *James* the second the now king, called the king's court in his kingdom of *Ireland* now remaining, it appears that the judgment aforesaid in form aforesaid given, and so as aforesaid removed by the court of the lord the now king, called the king's court, is in all things affirmed, when by the law of the land of the kingdom of *Ireland* aforesaid that judgment ought to have been reversed, &c. and prays that the court of the said lord the king here may proceed to the examination as well of the record and proceedings, as of the errors aforesaid; and that the judgment aforesaid, for the errors aforesaid and others being in the record and proceedings aforesaid, may be reversed, annulled and held as intirely void; and that the said *William* earl *Clanrickard*, and the lady *Hellen* his wife, to the errors aforesaid may rejoin.

Errors assigned
in England.

And the said *William* earl *Clanrickard* and the lady *Helen* his wife, as to the matters aforesaid above for error assigned, say that there is no error, neither in the record and proceedings aforesaid, nor in the rendition, nor in the affirmance of the judgment; and pray likewise, that the court of the lord the king here may proceed to the examination as well of the record and proceedings aforesaid, as of those matters for error above assigned, and that the judgment aforesaid may be in all things affirmed, &c. And because the court of the said lord the king here will advise before they give judgment of and upon the premises, day therefore is given to the parties aforesaid before the lord the king wheresoever, &c. to hear their judgment thereon, because the court of the said lord the king here thereof not yet, &c.

In nullo est erratum.

Read and Waldron.

Hill. 6 W. 3. Roll 249.

Afterwards, to wit, on *Wednesday* next after the octave of *St. Hillary* in this same term, before the lord the king at *Westminster* comes the said *Richard Waldron* by *W. W.* his attorney and says, that in the record and proceedings aforesaid, as also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid in form aforesaid given was given for the said *Richard Read*, otherwise *Covey*, against him the said *Richard Waldron*, when by the law of the land of this kingdom of *England* that judgment ought to have been given for the said *R. Waldron* against the said *R. Read*, otherwise *Covey*; therefore in that it is manifestly erroneous; There is error also in this, to wit, that by the record aforesaid it appears, that *Richard Read*, otherwise *Covey*, in the said *Trinity* term in the 5th year of the reign of the lord *William* now king and the lady *Mary* late queen of *England*, &c. aforesaid, by the said *Thomas Pryor* as his prochein amy, declared against the said *Richard Waldron* in the plea aforesaid; nevertheless the said *Thomas Pryor* had not any admission of record to warrant his appearance aforesaid for the said *Richard Read*; And hereupon the said *Richard Waldron* prays a writ of the said lord the king to *George Treby*, knt. chief justice of the common bench aforesaid to be directed, to certify the said lord the king more fully the truth thereof; and to him it is granted, &c. whereby the said *George Treby*, knt. chief justice of the common bench aforesaid, is commanded, that the rolls and other memorandums of such appearances, being in his custody of record of the said *Trinity* term in the 5th year aforesaid, being searched, what he shall find thereof in the same between the parties aforesaid in the plea aforesaid he without delay certify to the lord the king, wheresoever, &c. together with the writ to him therefore directed: Which said *George Treby*, knt. the chief justice aforesaid, by virtue of the writ aforesaid to him therefore directed, hath certified to the said lord the king at *Westminster*, that the rolls and other memorandums of the said *Trinity* term in the 5th year aforesaid, being in his custody of record, being searched, he hath not yet found that the said *Thomas Pryor* hath any admission of record to warrant his appearance for the said *Richard Read*, otherwise *Covey*, as his prochein amy against the said *Richard Waldron* in the said plea; which said writ, together with the return thereof, is filed before the lord the king at *Westminster* among the records without day of this term; and he prays that the judgment aforesaid, for those errors and others being in the record and proceedings aforesaid may be reversed, annulled and held as intirely void, and that he

[289]

Certiorari prayed to the C. J. to certify the admission.

Who certified there was none,

the said *Richard Waldron* may be restored to all things that he hath lost by reason of the judgment aforesaid; and that the said *Richard Read*, otherwise *Covey*, to the errors aforesaid may re-join, &c.

And the said *Richard Read*, otherwise *Covey*, by *John Lilly* his attorney comes and says, that there is no error either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, and prays, that the court of the said lord the king now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid above for error assigned, and that the judgment aforesaid may be in all things affirmed: But because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is given the parties aforesaid before the lord the king until from the day of *Easter* in 15 days, wheresoever, &c. to hear their judgment of and upon those premises, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid: And because it seems necessary and expedient to the court of the lord the king now here, before they proceed farther in this behalf, to be certified, whether there is any record of the admission of the said *Thomas Pryor* to warrant his appearance as *prochein amy* for the said *Richard Read*, otherwise *Covey*, against the said *Richard Waldron* in the plea aforesaid, in the said court of the said lord the king and of the said lady the late queen of the bench at *Westminster* inrolled of record of *Trinity* term in the 5th year of the reign of the said lord the now king and of the said late queen, or not, *George Treby*, knt. chief justice of the said lord the king of the bench at *Westminster* aforesaid, is commanded, that the records of admissions of infants to prosecute in the said court of the bench by their *prochein amy* of the said *Trinity* term in the 5th year of the reign of the said lord the now king and of the said late queen being searched, and what he shall find of the entry of that admission aforesaid, as fully and intirely as it remains before him, he certify to the said lord the king, wheresoever, &c. without delay, together with the writ of the said lord the king to him therefore directed, &c. Which said *George Treby*, by virtue of the writ of the said lord the king to him directed, hath certified to the said lord the king, that the records of the entries of the admission of infants to prosecute in the said court of the bench of the said *Trinity* term in the 5th year of the reign of the said lord the now king and of the said late queen being searched, he hath found an entry of record of a certain admission of the said *Thomas Pryor* to warrant his appearance as *prochein amy* of the said *Richard Read*, otherwise *Covey*, against the said *Richard Waldron* in the plea aforesaid, which follows in these words, to wit, Pleas inrolled at *Westminster* before *George Treby*, knt. and his companions, justices of the lord the king and of the lady the queen of the bench, of *Trinity* term in the 5th year

*In nullo est
erratum.*

Another *certiorari* awarded to inform the court.

Note; this was by rule of court, without which you cannot have a *certiorari* after issue joined.

The *certiorari* returned with the record of the admission.

year of the reign of the lord *William* and the lady *Mary*, by the grace of God of *England, Scotland, France* and *Ireland* king and queen, defenders of the faith, &c. Roll 1165.

[290]

The admission.

North'ton, to wit, **I**T is granted by the court of the lord and lady the now king and queen, that *Thomas Pryor*, gent. may prosecute for *Richard Read*, otherwise *Covey*, who is under the age of 21 years, as *prochein amy* of the said *Richard Read*, otherwise *Covey*, against *Richard Waldron* in a plea of trespass, assault and imprisonment: And hereupon the said *Richard Waldron*, as before, prays that the judgment aforesaid, for the errors aforesaid and others being in the record and proceedings aforesaid, may be revoked, annulled and held as intirely void, and that he may be restored to all things that he hath lost by reason of the judgment aforesaid: And because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid until wheresoever, &c. to hear their judgment of and upon the premisses, because the court of the said lord the king now here thereof not yet, &c.

Afterwards the judgment was affirmed.

Burr and Atwood,

Hill. 9 W. 3.

Error brought by the bail *tom quam*, quashed as to the principal judgment.

ON which day before the lord the king at *Westminster* comes as well the said *James Burr* in his proper person, as the said *John Atwood* by his attorney aforesaid: Whereupon the writ of error aforesaid being seen, and by the court here fully understood, it is considered, that the said writ of error, as to the principal judgment aforesaid against the said defendant *Drewett* in the same principal judgment at the suit of the said plaintiff *Atwood*, be only quashed: but as to the said joinder in error between the said *James Burr* and *John Atwood*, because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the said *James Burr* and *John Atwood* before the lord the king, &c.

Edwards and Luttrell.

Error on a judgment in *K. B.* in *Ireland* in the reign of *J. 2.* in a plea commenced in the reign of *C. 2.*

JAMES the second, by the grace of God of *England, Scotland, France* and *Ireland* king, defender of the faith, &c. To our trusty and well beloved counsellor *William Davis*, knt. our chief justice assigned to hold pleas in our court before us in *Ireland*, greeting: Because in the record and proceedings of a certain plea which was in the court of our most dear brother *Charles* the second, late king of *England*, &c. before the late king himself in *Ireland*, by bill, without the writ of the said late king,

king, between *Nicholas Luttrell*, plaintiff, and *Richard Edwards*, esq; defendant, in a certain plea of trespass and ejectment, and also in the rendition of the judgment of the plea aforesaid, after the death of the said late king in our court before us in *Ireland*, as it is said, manifest error hath happened, to the great damage of the said *Richard*, as by his complaint we have understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment be therein given, then the record and proceedings aforesaid, with all things touching them, to us under your seal you distinctly and openly send, and this writ, so that we may have them on the octave of the purification of the blessed *Mary*, wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein to correct that error what of right shall be to be done; and give notice to the said *Nicholas* that he be then there to prosecute in the plea aforesaid, and farther do and receive what our court before us in *England* shall consider in the premises, Witness ourself at *Westminster* 18th day of *December* in the 1st year of our reign.

Allowed.

The record and proceedings whereof mention is within made, with all things touching them, before the lord the king, wheresoever, &c. in a certain record to this writ annexed, I most humbly send; and I have given notice to the within mentioned *Nicholas Luttrell*, that he be then there to prosecute, &c. as I am within commanded,

The return,

[291]

The answer of *W. Davis*.

The earl of Kildare and Shaen, knt.

William the third, &c. To our trusty and well beloved counsellor *Richard Pyne*, knt. our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland*, greeting: Because in the record and proceeding, and also in the rendition of the judgment of a plea which was in the court of the lord *Charles* the second, late king of *England*, before the late king himself in the kingdom of *Ireland*, by bill between *James Shaen*, knt. and *Wentworth Fitzgerald*, earl of *Kildare* otherwise called *Wentworth Fitzgerald*, earl of *Kildare* in the kingdom of *Ireland*, as well of a debt of 3000*l.* which the said *James Shaen* hath in the same court recovered against the said *Wentworth*, as of 28*s.* 6*d.* which to the said *James* in the same court were adjudged for his damages which he had as well by reason of the detention of the debt aforesaid, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted; which said *Wentworth*, earl of *Kildare*, and *James Shaen*, afterwards died, as by the suggestion of *John*, now earl of *Kildare*, son and heir of the said *Wentworth*, earl of *Kildare*, we have understood,

Error brought
11 W. 3. by an
heir against an
administrator on
a judgment ob-
tained against
the ancestor by
the intestate in
the K. B. in
Ireland in the
reign of J. 2.

Error.

derstood, as it is said, manifest error hath happened, to the great damage of him the said *John*, now earl of *Kildare*, the said son and heir of the said *Wentworth*, now earl of *Kildare*, as by his complaint we have understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment be therein given, then the record and proceedings of the plea aforesaid with all things touching them, to us under your seal you distinctly and openly send, and this writ, so that we may have them from the day of the Holy Trinity in three weeks wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein to correct that error what of right shall be to be done; and give notice to *Arthur Shaen*, bart. administrator of the goods and chattels which belonged to the said *James Shaen* who died intestate, as it is said, that he be then there to proceed in the plea aforesaid, and farther to do and receive what our said court shall consider in the premisses. Witness ourself at *Westminster* the 8th day of *May* in the 11th year of our reign.

Terry.

Allowed *R. Pyne*.

The record and proceedings of the plea whereof mention is within made, with all things touching them, before the lord the king, wheresoever, &c. at the day and time within contained, I send in a certain record to this writ annexed; and I have given notice to the within named *Arthur Shaen*, bart. that he be then there to proceed in the plea, as I am within commanded.

So I answer *R. Pyne*.*Hanmer and his wife and Jacob.*

Error on a judgment in C. B. in *Ireland tempore C. 2.* and affirmed in the K. B. there *temp. J. 2.*

James, &c. To our trusty and well beloved counsellor *William Davis*, knt. our chief justice assigned to hold pleas in our court before us in *Ireland*, greeting: Because in the record and proceedings, as also in the rendition of the judgment of a plea which was before *John Keating*, esq; and his companions, justices of the lord *Charles* the second, late king of *England*, &c. in the court of the said late king, between *Edward Hanmer* and *Mary* his wife, and *Richard Jacob*, late of *Tullaghmore* in *Queen's* county, gent. of a certain trespass on the case to the same *Edward* and *Mary* by the said *Richard* done, which said record and proceedings, by reason of error happening, the same late king caused to be brought before him the said late king *Charles* the second in the kingdom of *Ireland*, and the judgment therein before us is affirmed, and before us in our said kingdom of *Ireland* now remains, as it is said, manifest error hath happened, to the great damage of the said *Richard*, as we have by his complaint under-

understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you that if judgment be therein given, then the record and proceedings aforesaid, with all things touching them, to us under your seal you distinctly and openly send, and this writ, &c. to Witness ourself, &c.

[292]

Huckell and Higginson.

George, &c. To our trusty and beloved *John Pratt*, knt. our chief justice assigned to hold pleas before us, greeting: Because in the record and proceedings and also in the rendition of the judgment of a plea which was before *Peter King*, knt. and his companions, then our justices of the bench, by our writ between *Thomas Huckell* the elder, and *T. H.* the younger, and *Gilbert Higginson*, of a certain trespass on the case to the same *Thomas* and *Thomas* by the said *Gilbert* done, as also in the affirmation of the same judgment in our court before us, as it is said, manifest error hath happened, to the great damage of the said *Gilbert*, as we have by his complaint understood; We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment therein be given and affirmed, then the record and proceedings aforesaid, with all things touching them, to us in our present parliament at the next sessions, to wit, on the 8th day of *December* next ensuing to be held, you distinctly and openly send, and this writ, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein, by the assent of the lords spiritual and temporal being in the same parliament, to correct that error what of right and according to the law and custom of *England* shall be to be done. Witness ourself at *Westminster* the 28th day of *November* in the 7th year of our reign.

Error in parliament on a judgment in C. B. affirmed in K. B.

Fish.

Homine replegiando.

More and Watts.

Mich. 12 W. 3: Roll 81:

The entry of a
nonpros in a ho-
mine replegiando
corrected by L.
C. J. Holt.
Salk. 581.
Pract. Reg. 23.

England; to wit. **T**HE lord the king hath sent to the sheriff of *Middlesex* his writ close in these words to wit, *William* the third, by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defendet of the faith, &c. To the sheriff of *Middlesex*, greeting: Whereas we have often commanded you, that you should justly and without delay cause to be replevied *Thomas More*, whom *Benjamin Goffe*, *John Dykes* and *Daniel Watts* have taken, and taken keep, as it is said, unless he be taken by our special command, or of our chief justice, or for the death of a man, or for our forest, or for any other offence for which according to the custom of *England* he is not replegiable, or should signify to us the cause why you would not, or could not, execute our commands formerly to you therefore directed, and you not regarding our commands aforesaid, as we have understood, to replevy the said *Thomas*, or at least to signify to us the cause why you would not, or could not, do it, have hitherto neglected, to the manifest contempt of us and our commands aforesaid, and to the no small damage and grievance of the said *Thomas*, at which we are greatly surprised and displeased; yet we command and firmly injoin you, that you cause the said *Thomas* to be replevied according to the tenor of our commands aforesaid to you before for that purpose directed, or be you yourself before us from the day of *St. Michael* in three weeks, wheresoever we shall then be in *England*, to shew why you have contemned to execute our command so often to you therefore directed, and have there this writ. Witness *Thomas* archbishop of *Canterbury* and the rest of the keepers and justices of our kingdom at *Westminster* 14th day of *October* in the 12th year of our reign.

Cesar.

The return.
Salk. 706.

The return of which said writ follows in these words: This writ and two other writs to replevy the within named *Thomas More* were delivered to me together and at once after the date of this writ and not before; and I farther most humbly certify to the lord the king, that before the coming of this writ the said *Thomas More* was eloined by the within named *Benjamin Goffe*, *John Dykes* and *Daniel Watts* to places intirely unknown to me,

so that I cannot replevy the said *Thomas More* according to the command of this writ.

The answer of *R. B. esq;* and *H. F. knt. sheriff.*

Upon which the said lord the king hath sent to the sheriff of *Middlesex* his other writ close in these words, to wit, *William* the third by the grace of God of *England, Scotland, France* and *Ireland* king, defender of the faith, &c. To the sheriff of *Middlesex*, greeting: Whereas by our several writs we have often commanded you, that you should justly and without delay cause *Thomas More* to be replevied, whom *Benjamin Goffe, John Dykes* and *Daniel Watts*, have taken, and taken detain, unless he should be taken by our special command or of our chief justice, or for the death of a man, or for our forest, or for any other offence for which according to the custom of *England* he is not replegiabable; and whereas by our other writ we have commanded and firmly enjoined you, that you should cause the said *Thomas* to be replevied according to the tenor of our writs afore said to you before for that purpose directed, or you yourself should be before us from the day of *St. Michael* in three weeks last past, wheresoever we should then be in *England*, to shew why you have contemned to execute our commands afore said so often to you therefore directed, and you at that day have returned to us, that the said *Thomas More*, before the coming of that writ, was eloined by the above named *Benjamin Goffe, John Dykes* and *Daniel Watts*, to places intirely unknown to you, so that you could not replevy the said *Thomas More* according to the command of that writ: Therefore we command you, that you take in *withernam* the said *Benjamin, John* and *Daniel*, and them so taken in your power in safe custody keep, until they will freely deliver the said *Thomas* by them in form afore said eloined, as by your return you have to us certified; and certify to us on the octave of *St. Martin* next ensuing, wheresoever we shall then be in *England*, how you shall have executed this our command, that we may farther cause to be done therein what of right and according to the law and custom of our kingdom of *England* we shall think fit to be done, and have then there this writ. Witness *J. Holt*, knt. at *Westminster* 23d day of *October* in the 12th year of our reign.

Writ of capias in
withernam.

[294]

Salk. 705.

Deane.

The return of which said writ follows in these words, to wit, by virtue of this writ to me directed, I have taken in *withernam* the body of the within named *Daniel Watts*, whose said body so taken in my power in safe custody I have hitherto kept, and yet do keep, as I am within commanded; and I do farther most humbly certify to the lord the king, that neither the said *Daniel* nor the within named *Benjamin* and *John* have hitherto delivered, or hath either of them delivered, the within named *Thomas*, and that

The return.

Hue and Cry.

that the same *Benjamin* and *John* are not found, nor is either of them found, in my bailiwick.

The answer of $\left\{ \begin{array}{l} R. B. \text{ knt.} \\ \text{and} \\ F. H. \text{ knt.} \end{array} \right\}$ Sheriff.

Plaintiff nonsuited.

On which day, to wit, on the said octave of *St. Martin*, before the lord the king at *Westminster*, the said *Daniel Watts* was brought here into court under the custody of the said sheriff of *Middlesex* by virtue of the said writ of *capias in withernam*, and offered himself against the said *Thomas More*, and the said *Thomas More* being solemnly called doth not come, nor farther prosecute his writ of *hominē replegiando* aforesaid: Therefore it is considered, that the said *Thomas More* be in mercy; and the said *Daniel Watts*, *Benjamin Goffe* and *John Dykes*, may go thereof without day, &c.

Hue and cry.

[295]

Croxall, who as well, &c. against the inhabitants of the hundred of *Hemlingford*.

Pleas before the lord the king at *Westminster* of *Hillary* term in 31st and 32d year of the reign of the lord *Charles the second*, now king of *England*, &c.

For a robbery committed on the servant.
Townsend's Tables 65.
Pract. Reg. 24.
13 E. 1. c. 1.

Warwick, to wit. THE men, inhabitants of the hundred of *Hemlingford* in the county aforesaid, were attached to answer as well the lord the now king as *Josiah Croxall*, who as well for the lord the king as for himself prosecutes in a plea, why whereas in a statute made in the parliament of the lord *Edward* the first, late king of *England*, held at *Winchester* in the 13th year of his reign, it is among other things ordained, For as much as from day to day robberies, murders, burnings and theft, were then oftener used than they had been before, and felons could not be attainted by the oath of jurors, which had rather suffer strangers to be robbed, and so pass without pain than to indict the offenders, of whom great part were people of the same country, or at least, if the offenders were of another country, the receivers were of places near; and they did the same, because an oath was not given unto jurors of the same country where such felonies were done, and to the restitution of damages before then no pain had been limited for their concealment and laches: The same late king, for to abate the power of felons, hath established a pain in that case, so that from thenceforth, for fear of the pain more than for fear of any oath, they should

should not spare any; nor conceal any felonies; and hath commanded; that cries should be solemnly made in all countries, hundreds; markets, fairs and all other places where great resort of people should be, so that none should excuse himself by ignorance; that from thenceforth every country should be so well kept, that immediately, upon such robberies and felonies committed, fresh suit should be made from town to town, and from country to country; likewise, when need required, inquests should be made in towns, by him that should be lord of the town; and after in the hundred, and in the franchise, and in the county, and sometime in two, three or four counties, in case when felonies should be committed in the marches of shires, so that the offenders might be attainted; and if the country would not answer for the bodies of such manner of offenders, the pain should be such, that every country, that is, to wit, the people dwelling in the country, should be answerable for the robberies done, and also the damages; so that the whole hundred, where robbery should be done, with the franchises being within the precinct of the same hundred, should be answerable for the robberies done; and if the robbery was done in division of two hundreds, both the hundreds and the franchises within them should be answerable; and longer term should not the country have after the robbery or felony done than 40 days, within which them behoveth to make gree of the robbery or of the offence, or that they answer of the bodies of the offenders, as in the statute aforesaid more fully is contained: And whereas a certain malefactor, to the said *Josiah* and *Robert Keeling*, servant of him the said *Josiah*, unknown, on the 15th day of *May* in the 13th year of the reign of our lord the now king; at the parish of *Shustock* in the county aforesaid in the king's highway there, and within the hundred of *Hemlingford* aforesaid, with force and arms on him the said *Robert Keeling* did make an assault, and 15*l.* of lawful money of *England* in monies numbered (being the money of him the said *Josiah Croxall* his master) did take, rob and carry away, against the peace of the said lord the now king; and the same *Robert Keeling*, immediately after the robbery and felony aforesaid committed, at *Shustock* aforesaid in the county aforesaid, which said town is within the hundred of *Hemlingford* aforesaid where the robbery aforesaid so as aforesaid was committed, hue and cry of the robbery aforesaid did make, and then and there notice to the inhabitants of *Shustock* aforesaid of that robbery did give; and after that robbery committed, and within 20 days next before the day of the issuing of the writ original of him the said *Josiah*, the said *Robert Keeling*, before *Charles Adderley*, knt. one of the justices of the said lord the king assigned to preserve the peace in the county of *Warwick*, inhabiting at *Hamshall* in the county of *Warwick* aforesaid near the hundred of *Hemlingford*, and near the said place where that robbery was committed, was examined on his corporal oath according to the form of the statute at *Westminster* in the county of *Middlesex* in the 27th year of the reign

28 E. 3. c. 11.

Robbers unknown took 15*l.* of the master's money.

[296]

Hue and cry made and notice given.
27 El. c. 13.
§ 11.
Oath made of the robbery.

That the inhabitants have made no satisfaction, &c.

The robbery set forth.

of the lady *Elizabeth*, late queen of *England*, &c. thereof made and provided; and the same *Robert* on his oath aforesaid did then say, that he did not know the party that committed that robbery, and after that robbery committed 40 days are now past: Nevertheless the said men, inhabitants within the said hundred of *Hemlingford*, amends for the robbery aforesaid committed to the said *Josiah* have not yet made, nor the body of the felon and malefactor aforesaid have taken, nor for his body hitherto have answered, but that felon and malefactor have permitted to escape in contempt of the said lord the now king, and to the great damage of him the said *Josiah*, and against the form of the statute aforesaid: And whereof the same *Josiah*, who as well for the lord the king as for himself prosecutes, by *John Lilly* his attorney complains, that whereas a certain malefactor, to wit, a man to the same *Josiah* and the said *Robert*, the servant of him the said *Josiah*, unknown, on the 15th day of *May* in the 31st year of the reign of the said lord the now king, with force and arms, to wit, swords, staves and knives, on him the said *Robert Keeling*, at *Shustock* aforesaid in the county aforesaid, in the king's highway there, and within the hundred of *Hemlingford* aforesaid, did make an assault, and 15*l.* of lawful money of *England* in monies numbered, (being the money of him the said *Josiah Croxall* his master,) then and there found, feloniously from the said *Robert* took, robbed and carried away, against the peace of the said lord the now king, &c. And the same *Robert*, immediately after the felony and robbery aforesaid committed, at *Shustock* aforesaid in the county aforesaid, being within the said hundred of *Hemlingford*, hue and cry of that robbery did make, and then and there notice to the inhabitants of the same town of *Shustock* of that robbery did give; and after that robbery committed, and within twenty days next before the day of the issuing of the writ original of him the said *Josiah*, the said *Robert Keeling* before *Charles Adderley*, knt. one of the justices of the said lord the king assigned to preserve the peace in the county aforesaid inhabiting at *Hamshall* in the county aforesaid near the hundred of *Hemlingford*, and near the said place where that robbery was committed, was examined on his corporal oath according to the form of the statute at *Westminster* in the county of *Middlesex* in the 27th year of the reign of the lady *Elizabeth*, late queen of *England*, &c. thereof made and provided, and the same *Robert* on his oath aforesaid then said, that he did not know the party that committed that robbery, and after that robbery committed forty days are now past: Nevertheless the same men, inhabitants within the said hundred of *Hemlingford*, amends for the robbery aforesaid committed to the said *Josiah* have not yet made, nor the body of the felon and malefactor aforesaid have taken, nor for his body hitherto have answered, but that felon and malefactor have permitted to escape, in contempt of the said lord the now king and to the great damage of him the said *Josiah*, and against the form of the statute aforesaid; whereby the same *Josiah* says that he is prejudiced, and hath damage to the value of 30*l.* And therefore he produces the suit, &c.

And

And the said men, inhabitants within the hundred of *Hemlingford* afore said, by *H. H.* their attorney come and defend the force and injury, when, &c. and whatsoever, &c. and say, that they are not guilty of the premisses above charged on them against the form of the statute afore said, as the said *Josiah*, who as well, &c. above against them complains: And of this they put themselves on the country: And the said *Josiah*, who as well, &c. likewise: And upon this the said *Josiah* says, that the said men, inhabitants within the hundred of *Hemlingford* afore said where the robbery afore said was committed, are parties defendant against whom the said *Josiah*, who as well, &c. in form afore said above complains; and for that reason he prays a writ of the lord the king to the sheriff of the county afore said to be directed, to cause to come here 12, &c. of the neighbourhood of the hundred of *Knightlowe* in the county afore said, which said hundred of *Knightlowe* is the next hundred in the same county to the said hundred of *Hemlingford* afore said, to try the issue afore said above joined: And because the said men, inhabitants within the said hundred of *Hemlingford*, do not deny it, it is granted him: Therefore the sheriff is commanded, that he cause to come on the octave of the purification of the blessed *Mary*, where so ever, &c. 12, &c. of the neighbourhood of the said hundred of *Knightlowe* afore said, by whom, &c. and who neither, &c. to recognise, &c. because as well, &c.

Not guilty.
1 Saund. 80.

Pleas before the lord the king at Westminster of Hillary term in the 31st and 32d year of the reign of the lord Charles the second, of England, &c.

Warwick, to wit. **T**HE jury between *Josiah Croxall*, who as well for the same lord the king as for himself prosecutes, by his attorney, plaintiff, and the men inhabitants within the hundred of *Hemlingford* in the county afore said in a plea of hue and cry, is respited before the lord the king at *Westminster* until from the day of *Easter* in 15 days, where so ever, &c. unless the justices of the lord the king assigned to take assises in the county afore said shall first come on *Saturday* the 20th day of *March* at *Warwick* in the county afore said, by the form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. The same day is given to the parties afore said, there, &c. And be it known, that the writ of the lord the king thereof the 12th day of *February* in this same term before the lord the king at *Westminster* was delivered of record to the under-sheriff of the county afore said, in form of law to be executed at his peril, &c.

[297]

Information.

The king against Coppleston, one of the lord Mountague's witnesses.

Trin. 9 W. 3. at the bar.

Information for perjury.

Count in reply.

Consuance as bailiff.

Midd^x, to wit, **B**E it remembered, that *Samuel Asty*, knt. coroner and attorney of the lord the king before the king himself, who for the lord the king in this behalf prosecutes, in his proper person comes here into the court of the said lord the king before the king himself at *Westminster* on *Saturday* next after 15 days of the Holy *Trinity* in this same term; and for the same lord the king gives the court here to understand and be informed, that otherwise, to wit, in *Hillary* term in the 7th year of the reign of the lord *William* the third, by the grace of God of *England, Scotland, France* and *Ireland* king, defender of the faith, &c. in the court of the said lord the king of the bench at *Westminster* in the county of *Middlesex*, before *George Treby*, knt. and his companions, then justices of the same lord the king of the bench aforesaid there, one *Robert Rickards* had impleaded one *Henry Cornesforth*, late of *Enfield* in the county aforesaid, yeoman, in a plea why he took the cattle, goods and chattels of him the said *Robert*, and them unjustly had detained against surety and pledges, &c. And whereon the same *Robert* by *Christopher Harris* his attorney then complained, that the said *Henry* on the 26th day of *September* in the 7th year of the reign of the lord *William* the third, now king of *England*, &c. at the parish of *Enfield* aforesaid, in a certain place there called *Enfield Hills* had taken the cattle, goods and chattels of him the said *Robert*, to wit, nine cows, one bull, 5 calves, one great brass copper, 20 quarters of wheat, two bushels of wheat threshed, 60 quarters of oats, 30 load of hay, four carts, one wain, two ploughs and 30 load of oats, and them unjustly had detained against surety and pledges until, &c. whereby the said *Robert* then said that he was prejudiced, and had damage to the value of 40 *l*. And therefore he then produced the suit, &c. And the said *Henry* by *C. D.* his attorney then came and defended the force and injury when, &c. and as bailiff of *Ralph* earl of *Mountague* and *Elizabeth* his wife well acknowledged the taking of the cattle, goods and chattels aforesaid in the

the said place in which, &c. and justly, &c. Because he then said that long before the said time of the taking of the cattle, goods and chattels aforesaid, *Christopher* late duke of *Albermarle* in his life-time was seised in his demean as of fee of and in one messuage and 377 acres of land with the appurtenances in the said parish of *Enfield*, and in the parish of *Edmonton* in the county of *Middlesex*, whereof the said place called *Enfield Hills* in which, &c. then was, and the said time when, &c. and also for time immemorial had been parcel; and being so thereof seised the said duke before the said time when, &c. to wit, on the 1st day of *November* in the year of the Lord 1678, at *Enfield* aforesaid had demised to *John Bathurst*, esq; the tenements aforesaid with the appurtenances whereof, &c. by the name of all that tenement, and the barns and stables thereto belonging, and all those 289 acres of land, more or less, situate, lying and being in the parishes of *Edmonton* and *Enfield*, then late in the possession of captain *Paskfield* then lately deceased; and all those 40 acres of land, more or less, situate, lying and being in the parish of *Enfield* or *Edmonton*, late in the possession of *Fench Waters* then lately deceased; and also all those 48 acres of land, more or less, situate, lying and being in the parish of *Edmonton* or *Enfield*, then late in the possession of *Robert Brown*; all which said premises were part and parcel of a park called *Enfield* park; except and always reserved out of the said demise to the said *Christopher* duke of *Albermarle*, his heirs and assigns, all timber-trees then standing, growing or being, or which at any time then after should be standing, growing or being in or upon the said demised premises, or in or upon any part or parcel thereof together with free liberty, full power and authority for the same *Christopher* duke of *Albermarle*, his heirs and assigns, for themselves and their friends and servants, or without, in his or their company from time to time and at all times during the said term, with or without horses, hawks or hounds, at his and their will and pleasure, to hunt and hawk in the said demised premises or any part thereof, at open and seasonable times, he or they doing as little hurt and damage to the corn and fences there as they conveniently could; To have and to hold the tenements aforesaid with the appurtenances as aforesaid demised, whereof, &c. to the said *John Bathurst*, his executors, administrators and assigns, from the feast of *St. Michael* the archangel then last past for and during the term of 21 years from thence next ensuing, and fully to be compleat and ended; Yielding and paying therefore yearly and every year during the said term to the said late duke, his heirs or assigns, at or in the dwelling-house of the said duke, commonly called or known by the name of *Albermarle house*, situate, lying and being near a place called *St. James's* in the county of *Middlesex*, or into the hands of the said duke's receiver for the time being, the yearly rent of 140*l.* of lawful money of *England*, at the feast of the Annunciation of the blessed virgin *Mary* and *St. Michael* the archangel, by even and equal portions; by virtue of

C. Duke of *Albermarle* seised in fee, and demised to *J. B.*

Exception of timber.

The habend.

The entry of the lessee.

The lessor devised the reversion to his wife for life,

who married the earl of Mountague;

and for rent arrear the defendant as their bailiff distrained.

[299]

Bar to the conveyance.

which said demise the said *John* afterwards, to wit, on the same 1st day of *November* 1678 aforesaid, into the tenements aforesaid with the appurtenances, whereof, &c. to him as aforesaid demised, had entered and was thereof possessed, the reversion thereof to the said duke, his heirs and assigns belonging; and the said *John* of the tenements aforesaid with the appurtenances, whereof, &c. as aforesaid being possessed, and the said duke of the said reversion of those tenements in form aforesaid being seised, the same duke afterwards, to wit, on the 4th day of *July* 1687, at *Enfield* aforesaid, had made his last will and testament in writing, and by his same last will had given and devised to the said *Elizabeth* then his wife, (among other things) the said reversion of the said tenements with the appurtenances, whereof, &c. To have and to hold to the same *Elizabeth* and her assigns for and during the term of the natural life of the said *Elizabeth*, and afterwards, and before the said time when, &c. to wit, on the 8th day of *October* 1688, the said duke at *Enfield* aforesaid died of such his estate of and in the reversion aforesaid as aforesaid seised; after whose death the said *Elizabeth* was seised of the reversion of the tenements aforesaid with the appurtenances, whereof, &c. in her demean as of freehold for the term of her life, by virtue of the devise aforesaid to her in form aforesaid made; and so thereof being seised the same *Elizabeth* afterwards, and before the said time when, &c. to wit, on the 20th day of *September* in the year of the Lord 1692, at *Enfield* aforesaid in the county of *Middlesex* aforesaid, had taken for her husband the said *Ralph* earl of *Mountague*, whereby the same *Ralph* earl of *Mountague* and *Elizabeth* his wife had been and then were seised of the reversion of the tenements aforesaid with the appurtenances, whereof, &c. in their demean as of freehold for the term of the life of the said *Elizabeth*; and because 350 *l.* of the rent aforesaid on the demise aforesaid above reserved for two years and the half of a year after the death of the said duke, ended on the feast of *St. Michael* the archangel then last past, to the same *Ralph* earl of *Mountague* and *Elizabeth* his wife at the said time when, &c. were in arrear and unpaid, the same *Henry*, as bailiff of the said *Ralph* earl of *Mountague* and *Elizabeth* his wife, for the said 350 *l.* of the rent aforesaid, to the same *Ralph* earl of *Mountague* and *Elizabeth* his wife due and then being in arrear, he well acknowledged the taking of the cattle, goods and chattels aforesaid in the said place called *Enfield Hills*, in which, &c. and justly, &c. as in parcel of the tenements aforesaid with the appurtenances to the same *John* as was aforesaid demised, by virtue of the demise aforesaid, &c. With this, that the same *Henry* would verily, that the said *Elizabeth* the wife of the said earl was then surviving and in full life, to wit, at *Enfield* aforesaid, &c. And the said *Robert* then said, that the said *Henry*, for the reason above alleged, as bailiff of the said *Ralph* earl of *Mountague* and *Elizabeth* duchess of *Albermarle*, the taking of the cattle, goods and chattels aforesaid in the said place in which, &c. ought not to acknowledge just, because he then said, that well and true it was,

was, that the said *Christopher*, late duke of *Albermarle*, in his life-time was seised in his demean as of fee of and in the said messuage and 377 acres of land with the appurtenances in the cognizance aforesaid abovementioned, and that the said place in which, &c. then was, and from time whereof, &c. and also for all the time aforesaid, had been thereof parcel; and that the same duke, before the said time when, &c. to wit, on the said 1st day of *November* 1678 aforesaid, had demised to the said *John Bathurst* the tenements aforesaid above specified under the yearly rent aforesaid in the said cognizance mentioned, and that by virtue of that demise the said *John* into the tenements aforesaid with the appurtenances, whereof, &c. to him as aforesaid demised, had entered and been thereof possessed, the reversion thereof to the said duke, his heirs and assigns belonging, as by that cognizance above was supposed; but the same *Robert* farther said, that the said *John* being so thereof possessed, the reversion thereof in form aforesaid belonging, the same duke in his life-time, and before the said time when, &c. to wit, on the 15th day of *July* 1681, at *Enfield* aforesaid, by his certain indenture then made between the said late duke, by the name of the most honourable *Christopher*, duke of *Albermarle*, earl of *Torrington*, baron *Monk of Potheridge*, *Beauchamp* and *Teas*, knight of the most honourable order of the garter, and one of the lords of the privy council of the then king, on the one part, and the most honourable *Henry* duke of *Newcastle*, the most honourable *John* earl of *Bath*, the honourable *Bernard Grenville*, esq; *Walter Clarges*, bart. and *Thomas Stringer*, knt. serjeant at law, on the other part, one part of which said indenture sealed with the seal of the said late duke of *Albermarle* he then there in court produced, the date whereof was the day and year last aforesaid, for and in consideration of 5 s. of lawful money of *England* by the said duke of *Newcastle*, *John* earl of *Bath*, *Bernard Grenville*, *Walter Clarges* and *Thomas Stringer*, to the same duke in hand paid, had bargained and sold to the said duke of *Newcastle*, earl of *Bath*, *Bernard Grenville*, *Walter Clarges* and *Thomas Stringer*, their executors and administrators, (among other things) the reversion of the tenements aforesaid, whereof, &c. To have and to hold to them from thenceforth unto the full end and term of one whole year from thence next ensuing, fully to be compleat and ended, as by the same indenture (among other things) was then more fully manifest and did appear; by virtue of which said bargain and sale, and by force of the statute for transferring uses into possession, they the said duke of *Newcastle*, earl of *Bath*, *Bernard Grenville*, *Walter Clarges* and *Thomas Stringer*, were possessed of the reversion of the tenements aforesaid with the appurtenances whereof, &c. for the said term to them as was aforesaid bargained and sold; and being so thereof possessed, and the said *John Bathurst* of the tenements aforesaid with the appurtenances, whereof, &c. in form aforesaid being possessed, the reversion thereof to the same late duke of *Albermarle* and his heirs belonging;

Confesses the
seisin and de-
mise,

and-pleads a
conveyance by
lease and releas;

27.H. 3. c. 10.

To the use of
himself in tail,
the remainder to
the E. of Bath
in fee,

[300]

and died without
issue.

Absque hoc. that
the duke died
seised in fee.

Issue on the
reversion.

belonging, he the same duke of *Albermarle* afterwards in his life-time, to wit, on the 16th day of *July* 1681 abovesaid, at *Enfield* abovesaid, by his certain indenture then and there made between him the said duke of *Albermarle* of the one part, and the said duke of *Newcastle*, *John* earl of *Bath*, *Bernard Grenvile*, *Walter Clarges* and *Thomas Stringer*, of the other part, one part of which said indenture sealed with the seal of the said late duke of *Albermarle* the said *Robert* there in court then produced, the date whereof was the same day and year last mentioned, for the natural love and affection which the same late duke of *Albermarle* had for the said *John* earl of *Bath*, his kinsman on his father's side, had released to the said duke of *Newcastle*, *John* earl of *Bath*, *Bernard Grenvile*, *Walter Clarges* and *Thomas Stringer*, and their heirs, the reversion of the tenements abovesaid with the appurtenances, whereof, &c. To have and to hold the reversion of those tenements with the appurtenances, whereof, &c. to the said duke of *Newcastle*, *John* earl of *Bath*, *Bernard Grenvile*, *Walter Clarges* and *Thomas Stringer*, and their heirs, to the use of the said duke of *Albermarle* and the heirs of his body lawfully begotten; and for want of such issue to the use of the said earl of *Bath* and his heirs for ever, as by the same indenture (among other things) was then more fully manifest and did appear; and by reason thereof the said duke of *Albermarle* was seised of and in the reversion of the tenements abovesaid with the appurtenances whereof, &c. in his demean as of fee-tail, to wit, to him and the heirs of his body lawfully begotten, the remainder thereof to the said earl of *Bath*, and his heirs belonging; and so being thereof seised, the remainder thereof in form abovesaid belonging, and the said *John Bathurst* of the tenements abovesaid with the appurtenances in form abovesaid being possessed, the same duke of *Albermarle* afterwards, and before the said time when, &c. to wit, on the 1st day of *May* in the first year of the reign of the lord the now king and of the lady *Mary* late queen of *England*, at *Enfield* abovesaid died, without heir of his body begotten, and of such his estate of and in his reversion abovesaid with the appurtenances seised, whereby the said earl had been and then was seised of the reversion of the tenements abovesaid with the appurtenances whereof, &c. in his demean as of fee; Without that, that the said *Christopher*, late duke of *Albermarle*, died of the reversion of the tenements abovesaid with the appurtenances, whereof, &c. seised in his demean as of fee, in manner and form as the said *Henry* by his cognizance abovesaid above had alledged; And that he was then ready to verify, &c. Wherefore for that the said *Henry*, the taking of the cattle, goods and chattels abovesaid in the said place in which, &c. had above acknowledged, the same *Robert* then prayed judgment and his damages by reason of the taking and unjustly detaining of the cattle, goods and chattels abovesaid, to be adjudged to him, &c. And the said *Henry* as before then said, that the said *Christopher*, late duke of *Albermarle*, died seised to him-

self

self and his heirs of the reversion of the tenements aforesaid with the appurtenances, whereof, &c. in manner and form as the same *Henry* by his cognisance aforesaid above had alledged, to wit, at the parish of *Enfield* aforesaid in the county aforesaid: And of that he then put himself on the country: And the said *Robert* likewise: On which said issue between the parties aforesaid, so as aforesaid joined, it was in such manner proceeded, that afterwards, to wit, on the 17th day of *July* in the 8th year of the reign of the said lord the now king, at *Westminster* aforesaid in the said county of *Middlesex*, in the said court of the said lord the king before the said *George Treby*, knt. and his then companions, justices of the said lord the king of the bench aforesaid there the issue aforesaid by a certain jury of the country in that behalf lawfully impanelled, and returned and sworn, was tried, as by the record and proceedings aforesaid in the said court of the bench aforesaid at *Westminster* aforesaid remaining more fully appears; and that on the said trial by certain witnesses then and there on the behalf of the said *Robert Rickards* the plaintiff in the cause aforesaid produced, and then and there duly sworn, it was then and there given in evidence to the jurors of that jury, that the said indentures of bargain and sale and release, bearing date the 15th and 16th days of *July* in the year of the lord 1681, had been sealed and delivered by the said late duke of *Albermarle* on or about the times of the dates of the said indentures at the then dwelling-house of him the said late duke of *Albermarle*, commonly called or known by the name of *Albermarle house*, which said house on the said 16th day of *July* in that year was situate in the parish of *St. Martin in the Fields* in the county of *Middlesex* aforesaid; and that one *John Coppleston*, knt. at the times of the sealing and delivery of those indentures was present in that house with the said duke of *Albermarle*, and was a witness to the sealing and delivery of the same: And farther the said coroner and attorney of the said lord the king for the same lord the king gives the court here to understand and be informed, that then at that trial, to wit, on the said 17th day of *July* in the 8th year of the reign of the said lord the now king aforesaid, at *Westminster* aforesaid in the said county of *Middlesex*, in the said court of the said lord the king before the same justices of the said lord the king of the bench aforesaid there one *William Coppleston*, late of _____ was produced a witness on the behalf of the said *Henry Cornesforth* the defendant in the cause aforesaid, and then and there was sworn on the Holy Evangelists to say the truth, the whole truth, and nothing but the truth, of and in the premises in the issue between the parties aforesaid, in manner and form aforesaid put; and that the same *William Coppleston*, not having God before his eyes, but being moved and seduced by the instigation of the devil, then and there by his own proper act and consent falsely and maliciously, voluntarily and corruptly on his oath aforesaid said, deposed, swore, and to the jurors of the jury aforesaid of and concerning the said *John Coppleston* in evidence gave

The assignment
of the perjury.

Information.

gave, that he (meaning him the said *William Coppleston*) was with *John Coppleston*, knt. (meaning the said *John Coppleston*, knt.) at *Cannington* (meaning a certain place called *Cannington* in the county of *Somerset*;) in *July* 81, (meaning the month of *July* in the year of the Lord 1681 above said,) and that he (again meaning him the said *William Coppleston*) was with *John Coppleston*, knt. (again meaning the same *John Coppleston*, knt.) at *Cannington*, (again meaning *Cannington* above said) in *July* 1681, (meaning the same month of *July* in that year,) and that he (again meaning himself the same *William Coppleston*) was with *John Coppleston*, knt. (meaning the said *John Coppleston*, knt.) in the month of *July* in the year of the lord 1681, when in truth and in fact the said *John Coppleston*, knt. was not at *Cannington* above said in the said county of *Somerset* in the said month of *July* in the year of the Lord 1681 above said, and when in truth and in fact the said *William Coppleston* was not with the said *John Coppleston*, knt. at *Cannington* above said in the said month of *July* in the year of the lord 1681 above said, as the same *William Coppleston* on his oath above said falsely, maliciously and voluntarily, and corruptly said, deposed, swore, and to the jurors of the jury above said in evidencæ gave; and when in truth and in fact the said *John Coppleston*, knt. was not at *Cannington* above said at any time whatever in the same month of *July* in that year; and when in truth and in fact the said *John Coppleston*, knt. during the whole said month of *July* in the year of the Lord 1681 above said did inhabit at *Westminster* above said in the county of *Middlesex* above said; and so the same coroner and attorney of the said lord the king for the same lord the king says, that the said *William Coppleston* on the said 17th day of *July* in the 8th year of the said lord the now king above said, at *Westminster* above said in the said county of *Middlesex* in the said court of the said lord the king of the bench there, before the said justices of the same lord the king of the bench above said, by his proper act and consent, and from his own wicked intention in manner and form above said falsely, maliciously, voluntarily and corruptly, on his oath above said voluntarily and corruptly committed perjury, to the great displeasure of Almighty God, in contempt of the said lord the now king and his laws, to the bad and pernicious example of all others in such case offending, and against the peace of the lord the now king, his crown and dignity, &c. Wherefore the said lord the king prays the advice of the court here in the premisses, and due process of law against him the said *William Coppleston* in this behalf to be made, to answer to the said lord the king of and in the premisses, &c.

After a verdict for the king judgment was arrested, because *Cannington* was not by the defendant on his oath sworn to be *Cannington* in the county of *Somerset*, but *Cannington* only, and the

[301]

Averments,

And so he voluntarily committed perjury.

the county of Somerset was brought into the information with an inuendo: But afterwards in parliament upon a writ of error 12 March 1697 the judgment was reversed.

The Attorney general against Peckham and others.

Kent, to wit, **B**E it remember'd, that *Thomas Trevor*, knt. attorney general of the lord the now king, who for the same lord the king in this behalf prosecutes, in his proper person comes here into the court of the said lord the king before the king himself at *Westminster* on *Monday* next after 15 days of *St. Martin* in this same term, and for the same lord the king gives the court here to understand and be informed, that *Tobias Verrell*, late of *Bradborne* in the parish of *Sevenoake* in the county of *Kent*, labourer, *Nicholas Cooper*, late of *Penhurst* in the county aforesaid, labourer, *Walter Woodgate*, late of *Radleaze* in the county aforesaid, labourer, and *Charles Ellis*, late of *Penhurst* aforesaid in the county aforesaid, labourer, on the 10th day of *August* in the 10th year of the reign of our lord *William* the third, &c. with force and arms, to wit, with pistols and swords at *Aylesford* in the county aforesaid did unlawfully meet together and assemble themselves to disturb the peace of the said lord the king, and being then and there so met together and assembled, the park of *John Banks*, bart. there, in which deer then and long before were kept, then and there with the force and arms aforesaid unlawfully broke and entered, and in and upon *Edward Bush*, *John Cuwill*, *Richard Hodges* and *John Fletcher*, then the servants of the said *John Banks*, bart. and in the peace of God and of the said lord the king then and there being, then and there with the force and arms aforesaid made an assault and an affray, and them the said *E. B. J. C. R. H.* and *J. F.* then and there with force and arms, &c. did unlawfully beat, wound and abuse, so that their lives were greatly despaired of, and the pales of the park aforesaid, being the fence of the same park, then and there with force and arms did unlawfully break, throw down and spoil, and other outrages on the same *J. Banks*, bart. *E. B. J. C. R. H.* and *J. F.* then and there with the force and arms aforesaid did unlawfully commit, to the great damage of them the said *J. Banks*, bart. *E. B. J. C. R. H.* and *J. F.* in contempt of the said lord the now king and his laws, to the bad and pernicious example of all others in such case offending, and against the peace of the said lord the now king, his crown and dignity, &c. Wherefore the same attorney general of the said lord the now king for the same lord the king prays the advice of the court here in the premisses, and due process of law against the said *Tobias V. Walter W. Nicholas C.* and *Charles Ellis* in this behalf to be made, to answer to the said lord the king in the premisses, &c.

An information
for a riot against
deer-stealers.

Banks, bart. against Peckham and others,

A Certiorari to
remove a con-
viction of deer-
stealing on 3 &
4 W. 3. c. 10.

William, &c. To William Twisden, bart. Philip Boteler, bart. S. Leonard, bart. J. Williamson, kn. C. Bickerstaffe, kn. W. Lambard, esq; J. Packer, esq; William Selby, esq; and Thomas Blisse, esq; keepers of our peace, and our justices assigned to hear and determine divers felonies, trespasses and other misdemeanors in our county of Kent, and every of them, greeting: Being willing for certain reasons to be certified of the record of conviction of Reginald Peckham the elder, for certain trespasses against the form of the statute made *For the more effectual discovery and punishment of deer-stealers*, whereof before you he is convicted, (as it is said) before us by you to be sent; We command you and every of you, that the record of the conviction aforesaid, with all things touching it, as fully and intirely as it now remains before you, by whatever name the said Reginald may be called in the same, before us under your or one of your seals, from the day of St. Michael in three weeks, wherefoever we shall then be in England, you or one of you send, together with this writ, that we may farther cause to be done therein what of right and according to the law and custom of our kingdom of England we shall see to be done. Witness J. Holt, kn. at Westminster the 1st day of July in the 8th year of our reign.

Pract. Reg. 312.

Atry.

The return of
the conviction.

Kent, to wit. **B**E it remembered, that otherwise, to wit, on the 5th day of September in the 7th year of the reign of our lord William the third, by the grace of God of England, Scotland, France, and Ireland king, defender of the faith, &c. at Maidstone in the county of Kent, before Humphry Miller, bart. Philip Boteler, bart. and T. Blisse, esq; then and yet the justices of the said lord the king assigned to keep his peace in the county aforesaid, as also assigned to hear and determine divers felonies, trespasses and other misdemeanors committed in the same county, on the information of John Banks, gent. and on the oath of Edward Bush, of the parish of Shore-ditch in the county of Middlesex carpenter, (being a credible witness) one Reginald Peckham the younger, of Wrotham in the county of Kent aforesaid, gent. George Herbert of Tonbridge in the county aforesaid, gent. Charles Farmer of Rotharfield in the county of Sussex, gent. Nicholas Copper of Igham in the county of Kent aforesaid, yeoman, &c. duly and according to the form of the statute in that case made and provided, were convicted, and each of them was convicted by the justices aforesaid, for this, that the said R. Peckham, G. Herbert, C. Farmer, N. Copper, E. Chambers and E. Garret, on the 14th day of August in the 7th year above said, about the 1st hour in the night of the same day, with force and arms, &c. at Aylesford in the county aforesaid,

said, in the park of *John Banks* of *Aylesford* aforesaid, bart. there situate, lying and being, (and then being the park and soil in which fallow-deer then and there before were usually kept, and then were kept,) four fallow-deer of the said *John Banks*, bart. with certain grey-hounds unlawfully and unjustly had hunted, chased, taken, killed and carried away, without the consent of the said *John Banks*, bart. (then and yet owner and possessor of the park and deer aforesaid,) or any other person intrusted with the custody thereof, against the form of the statute in such case made and provided; and farther then and there it was considered and adjudged by the justices aforesaid, that they the said *Reginald Peckham*, *G. Herbert*, *Charles Farmer*, *Nicholas Copper*, *Edward Chambers* and *Edward Garret*, according to the form of the statute aforesaid, should forfeit and each of them separately should forfeit the sum of 120*l.* for his offence aforesaid, to wit, the sum of 30*l.* for every deer of the said four deer so as aforesaid hunted, chased, killed and taken away, one third part thereof to be given to the informer aforesaid, another third part to the use of the poor of the parish of *Aylesford* aforesaid, in which parish the offence aforesaid was committed, and the other third part to the said *John Banks*, bart. the owner of the deer aforesaid, as by the conviction and judgment aforesaid by the justices aforesaid ended and given, and in the hands of the said justices remaining, more fully is manifest and appears: And now, to wit, on *Thursday* the 13th day of *August* in the 8th year of the reign of the said lord the now king, at *Tenbridge* in the county of *Kent* aforesaid, the said *John Banks* of *A.* aforesaid in the county aforesaid, gent. and the said *Edward Bush* in their proper persons come before us *William Twisden*, bart. *Philip Boteler*, bart, &c. and others our companions, justices of the said lord the king assigned to preserve his peace in the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors in the same county committed; and the said *John Banks*, gent. gives us the said justices to understand and be informed, that *Reginald Peckham* the elder, of *Wrotham* in the county of *Kent* aforesaid esq; on the said 14th day of *August* in the 7th year of the reign of the said lord the now king aforesaid, at *Aylesford* aforesaid in the county of *Kent* aforesaid, with force and arms, &c. was aiding and assisting to them the said *Reginald Peckham* the younger, *George Herbert*, &c. in the unlawful and unjust hunting, chasing, taking, killing, wounding and carrying away of the said four deers so as aforesaid, in the said park of the said *John Banks*, bart. hunted, chased, taken, killed, wounded and carried away, against the form of the statute aforesaid; and hereupon the said *Edward Bush*, (being a credible witness) before us the said justices last mentioned, now here takes his corporal oath on the Holy Gospel of God to tell the truth of and upon the premises to us the said *William Twisden*, *Philip Boteler*, &c. here having power and authority to administer an oath to the same *Edward Bush* in this behalf, and here being

Information.

being sworn he the said *Edward Bush* on his oath aforesaid says, deposes and swears, that the said *Reginald Peckham* the elder, of *Wrotham* aforesaid in the county of *Kent*, esq; on the said 14th day of *August* in the 7th year of the reign of the said lord the now king aforesaid, at *Aylesford* aforesaid in the county of *Kent* aforesaid, with force and arms, &c. was aiding and assisting to them the said *Reginald Peckham* the younger, &c. in the unlawful and unjust hunting, chasing, taking, killing, wounding and carrying away of the said four deer so as aforesaid in the said park of the said *John Banks*, bart. hunted, chased, taken, killed, wounded and carried away, against the form of the statute aforesaid; therefore it is considered and adjudged by us the said *William Twisden*, *Philip Boteler*, &c. the justices aforesaid, on the citation and hearing of the said *Reginald Peckham* the elder, that the said *Reginald Peckham* the elder, on the premisses above on him as aforesaid charged by the testimony of the said *Edward Bush*, (a credible witness on his oath aforesaid,) before us the said justices, is convicted according to the form of the statute in such case made and provided (he the said *Reginald Peckham* the elder being duly prosecuted for the offence aforesaid within 12 months after the fact committed,) and that the said *Reginald Peckham* the elder do forfeit the sum of 120 *l.* for his offence aforesaid, to wit, the sum of 30 *l.* for every deer of the said four deers so as aforesaid hunted, taken, killed and carried away, one third part of the said sum of 120 *l.* to be given to *John Banks*, gent. the informer aforesaid, one other third part of the said sum of 120 *l.* to the use of the poor of the parish of *Aylesford* aforesaid, in which parish the offence aforesaid was committed, and one other third part of the said sum of 120 *l.* to the said *John Banks*, bart. the owner of the park and deer aforesaid, according to the form of the statute aforesaid. In witness whereof we the said justices last mentioned to this our record have set our hands and seals, at *Tonbridge* aforesaid in the county of *Kent* aforesaid, the said 13th day of *August* in the 8th year of the reign of the said lord the now king aforesaid, and in the year of the lord 1696.

William Twisden, ☉
Philip Boteler, ☉
Stephen Leonard, ☉
 &c.

Halscy against Hope.

Information for
 exercising the
 trade of a brewer.
 1 Lutw. 164.
 Hob. 327.

Midd, to wit. *JOHN Halscy*, who as well for the lord the king as for himself in this behalf prosecutes, comes here into the court of the said lord the king at the general quarter-sessions of the peace of the said lord the king held for the county of *Middlesex* at *Hicks's Hall*, in the parish of _____ day in the 1st year of the reign of the lord *George*, now king of *Great Britain*, &c. before _____ and others their companions, justices of the said lord the king assigned to preserve the peace in the county

Inquisition.

† 303

county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the same county, and as well for the said lord the king as for himself gives the court here to understand and be informed, that *Andrew Hope* of the parish of *St. Martin in the Fields* in the county of *Middlesex* aforesaid, on the 2d day of *August* in the year of the lord 1714, at the parish aforesaid in the county aforesaid, and for the space of six months then next following, for his own proper gain voluntarily used, exercised and occupied the art, mystery or manual occupation of a brewer, being an art, mystery or manual occupation used in *England* at the time of the making of the statute in such case made and provided, in which said art, mystery or manual occupation he the same *Andrew* was not brought up as an apprentice for the space of seven years, against the form of the statute in such made and provided, whereby the same *Andrew* forfeited and lost 12 *l.* to wit, 40 *s.* for every month the same *Andrew Hope* so as aforesaid used, exercised and occupied the art, mystery or manual occupation of a brewer aforesaid: Whereon the same *John Halsley*, who as well for the said lord the king as for himself in this behalf prosecutes, prays the advice of the court here in the premisses, and due process of law against the said *Andrew Hope* in this behalf to be made, and that the said *Andrew Hope* may forfeit and lose for his offences aforesaid, to wit, 40 *s.* for every month aforesaid; and that he the same *John Halsley*, who as well for the said lord the king as for himself in this behalf prosecutes, may have a moiety of the forfeitures aforesaid, according to the form of the statute aforesaid in such case made and provided, and also that the said *Andrew Hope* may come here into court to answer of and upon the premisses.

5 El. c. 4. § 38.

[304]

Sect. 39.

Inquisition.

The King against The Lord Griffin.

William the third, &c. To our trusty and well beloved *John Winston*, *Richard Butler* the elder, *Edward Bromage*, *John Radford*, *Charles Pultney*, and *John Alendon*, esq; *Samuel Theed*, *Collins* and *John Bradford*, gent. greeting: Whereas at our sessions of oyer and terminer held for the city of *London* at Justice-hall in the *Old Baily*, *London*, in the parish of *St. Sepulchre* in the ward of *Farringdon Without*, *London*, on *Friday*, to wit, 30th day of *August* in the 7th year of our reign, before *Thomas Lane*, knt. mayor of the city of *London* aforesaid, *John Halt*, knt.

our

A commission to inquire of lands forfeited on an outlawry for high treason.

35 H. 8. c. 2.

[305]

Our chief justice assigned to hold pleas before us; *Edward Nevill*,
knt. one of our justices of the bench, *John Moore*, knt. one of the
aldermen of the city aforesaid; *Salathiel Lovell*, knt. serjeant at law,
and recorder of the same city, and *Peter Daniel*, knt. another of
the aldermen of the city aforesaid, our justices, by our letters patent
to the same justices before named and the mayor of the city afore-
said and others, or any four or more of them, under our great
seal of *England* made, to inquire by the oath of good and lawful
men of the city aforesaid, and other ways, methods and means
whereby they shall or may better know, as well within liberties
as without, of all treasons, misprisions of treason and conceal-
ments of treason against us out of this kingdom of *England*
wheresoever, by whomsoever and howsoever had, done, perpe-
trated or committed, according to the form of the statute in the
parliament of the lord *Henry* the eighth, late king of *England*, &c.
in the 35th year of his reign held at *Westminster*, made and provided;
and the same treasons and other the premises (for that time) to
hear and determine, according to the law and custom of our king-
dom of *England* assigned, by the oath of *Adrian Beyer*, *John*
Moore, (reciting the rest of the jurors) good and lawful men of
the city of *London* aforesaid, being sworn and charged to inquire
for us for the body of the city aforesaid, it was presented, That
whereas a war open and notoriously publick between us and
Lewis the *French* king long was and yet is, during which time
the said *Lewis* the *French* king, and his subjects were and yet
are adversaries and enemies to us and our subjects, one *Charles*
earl of *Middleton*, late of *London*, *Edward* lord *Griffin*, late of
London, *Roger Palmer*, late of *London*, esq; (so on, reciting several
more) being subjects to us of this kingdom of *England*, the pre-
misses well knowing, the fear of God in their hearts not having,
nor the duty of their allegiance to us their supreme and natural
lord considering, but by the instigation of the devil moved and
seduced, as false traitors against us their true and undoubted lord
the cordial love and true and due obedience and allegiance which
every our subjects should to us bear, and of right is bound to
bear, wholly with-drawing, and contriving, practising and with
their whole strength intending us and our faithful subjects to our
adversaries and enemies aforesaid to make subject during the
war aforesaid, to wit, on the 25th day of *March* in the 7th year
of our reign; and at divers other days and times, as well before
as after, out of this kingdom of *England*, to wit in the kingdom
of *France* in parts beyond the seas; with force and arms, &c.
falsly, maliciously, knowingly, advisedly, diabolically, wickedly
and traiterously, to our same adversaries and enemies of and in the
same war were adhering, aiding and assisting, and in performance
and execution of those treason and traiterous adherences then and
there during that war maliciously, voluntarily and traiterously
with force and arms, to and among the adversaries and enemies
aforesaid the war aforesaid against us waging and prosecuting, as-
sembled, and themselves with the said adversaries and enemies
joined;

joined, and the same adversaries and enemies of and in that war with their presence, counsel, aid, assistance, comfort, strength and power then and there traitorously comforted, aided, helped, supported and assisted, against the duty of their allegiance and also against our peace, crown and dignity, and against the form of the statute in such case made and provided, &c. as by that indictment in the same court within the city of *London* aforesaid of record now remaining manifestly appears: And whereas also on the indictment aforesaid it was in such manner proceeded, that afterwards, at the sessions of *oyer* and *terminer* held by adjournment on *Wednesday*, to wit, the 9th day of *October* in the 7th year of our reign, before our justices aforesaid in the letters patent aforesaid named so as aforesaid assigned, at *Justice Hall* aforesaid for the city of *London* in form aforesaid mentioned, the sheriffs of the city of *London* aforesaid were commanded by our writ that they should cause the said *Charles* earl of *Middleton*, *Edward* lord *Griffin*, *Roger Palmer*, esq; (so on reciting there names again) to be called from hustling to hustling, until according to the law and custom of our kingdom of *England* they should be outlawed, if they should not appear, and if they should appear, then they should take them, and them safely should keep, so that they should have their bodies before our justices by the letters patent aforesaid in form aforesaid assigned, as the sessions of *oyer* and *terminer* for the city of *London* aforesaid to be held next after the feast of *St. Mathew* the apostle then next ensuing, to answer to us for the treasons whereof in form aforesaid they were indicted: At which said sessions of *oyer* and *terminer* held for the city of *London*, aforesaid, at *Justice Hall* aforesaid in the said parish of *St. Sepulchre* in the ward of *Farringdon Without*, *London* aforesaid, after the said feast of *St. Mathew* the apostle, to wit, on *Thursday* the 24th day of *February* in the 8th year of our reign, being the next sessions after the same feast before our justices by the same letters patent in form aforesaid to inquire, hear and determine assigned, *Edward Willis*, knt. and *Owen Buckingham*, knt. sheriffs of the city of *London* aforesaid, returned the writ of *exigi facias* aforesaid in the form following, to wit, That *Roger Palmer*, esq; earl of *Castlemain* in the kingdom of *Ireland*, freely surrendered himself to our prison in our custody, whose body at the day and place aforesaid before our justices to inquire, &c. they had ready; and that the said *Edward Hales*, bart. was dead; and also that afterwards, at the hustings of plea of lands held for the city of *London* in the *Guild-hall* of the city of *London* within the city of *London*, on *Monday* next after the feast of the purification of the blessed virgin *Mary* in the year above said, the said *Charles* earl of *Middleton*, *Edward* lord *Griffin* (and the rest of them named) by virtue of our writ of *exigi facias* out of the court aforesaid duly issued, and to the sheriffs of the city of *London* in that behalf directed as aforesaid, by due course of law proceeding, were the 5th time called and did not appear, nor did any of them appear; therefore the same *Charles*

[306]

earl of *Middleton*, *Edward lord Griffin*, &c. were outlawed, and every of them separately by himself was outlawed, as by the writ aforefaid and the return thereof in the court aforefaid now of record in their full force and strength, not reversed, or in any manner annulled, remaining manifestly appears: By reason whereof all the goods, chattels, lands, tenements and hereditaments whatsoever of which the said *Charles earl of Middleton*, *Edward lord Griffin*, (and the others understood as before) were possessed or seised, or any of them was possessed or seised, in use of possession, by any right, title or means within this kingdom of *England* or elsewhere, within any of our dominions, became and are forfeited to us: Know therefore, that we in your fidelity, industry, and prudent circumspection in the management of our affairs greatly confiding, have assigned you to be our commissioners in this behalf, and by the tenor of these presents give to you, or any three or more of you, full power and authority to inquire as well by the oath of good and lawful men of our county of *Northampton*, by whom the truth of the matter may be better known, as by the examinations and depositions of credible witnesses before you, or any three or more of you, to be called and examined on their oaths, and by all other ways, means and methods whereby you shall or may better know, or any three or more of you shall or may better know, what lordships, lands, tenements and hereditaments, and of what yearly value the said *Edward lord Griffin*, or any other or any others to his use, had on the said *Monday* next after the feast of the blessed virgin *Mary* in the 7th year of the reign aforefaid, on which day as aforefaid he was outlawed, or ever after, and also what and what manner of leases or grants of any lands, tenements or hereditaments, and what and what manner of annuities or yearly rents, and what goods and chattels, and of what price, and what debts, specialities and sums of money the same *Edward lord Griffin*, or any other or any others to his use, had on the said *Monday* next after the feast of the purification of the blessed virgin *Mary* in the 7th year of our reign above-said, on which day as aforefaid he was outlawed, or ever after, and of all other articles, things and circumstances, the premises aforefaid or any of them in any manner concerning more fully the truth; and those lordships, manors, lands, tenements, goods and chattels, and other the premises aforefaid with the appurtenances so as aforefaid to be found to enter, take and seise into our hands: And therefore we command you, or any three or more of you, that a certain day and place, or days and places, which you for this purpose shall appoint, or any three or more of you shall appoint, you diligently on the premises make an inquisition or inquisitions, and that or those distinctly and openly made you bring, or any three or more of you bring, before the barons of our exchequer without delay, under your or any three or more of your seals, together with these our letters patent: We command also by the tenor of these presents our sheriff of the county

county of *Northampton* aforesaid, that at a certain day and place, or days and places, which you shall appoint, or any three or more of you shall appoint, and to him on our behalf shall give notice, or any three or more of you shall give notice, he cause to come before you, or any three or more of you, so many and such good and lawful men of his bailiwick, as well within liberties as without, by whom the truth of the matter may be known and inquired: We also give you, or any three or more of you, full power and authority to summon and cause to appear before you what persons soever proper to be examined in the premisses, and them of and in the premisses, the holy gospel being by them first touched, before you or any three or more of you, on their oaths corporally to be taken diligently to examine, and their examinations to receive, and in writing in parchment to reduce, lest this our present command should remain farther to be executed: We give moreover to all and singular mayors, sheriffs, bailiffs, constables, and all other our officers, ministers and subjects whomsoever by the tenor of these presents strictly in command, that you and every of you in the execution of the premisses they observe, obey and attend, as it behoveth. In witness whereof these our letters we have caused to be made patent. Witness ourself at *Westminster* 15th day of *March* in the ninth year of our reign.

Trevor Dawling, by warrant of the attorney general.

The execution of this commission appears in a certain inquisition to the commission annexed. *John Clendon, John Radford, Charles Pultney, John Bradford*.

An inquisition indented, taken at the sign of the *George* in *Kettering* in the county of *Northampton* aforesaid, 12th day of *August* in the ninth year of the reign of our lord *William* the third, by the grace of God of *England, Scotland, France and Ireland* king, defender of the faith, &c. before us *John Clendon, John Radford, Charles Pultney*, esq; and *John Bradford*, gent. commissioners of the said lord the king, by virtue of the commission of the said lord the king under his great seal of *England* sealed, bearing date at *Westminster* the 15th day of *March* last past, to us, or any three or more in the same commission named, directed, and to this inquisition annexed, to inquire on the behalf of the said lord the king of certain things, articles and circumstances in the same commission specified, by the oath of *Joseph Baker*, gent. *William Baker, John Ives*, &c. (reciting all the jurors) good and lawful men of the county of *Northampton* aforesaid, who being sworn and charged of and upon the premisses on their oath say, that *Edward* lord *Griffin* in the commission aforesaid named, on the day of the committing the high treason in the same commission specified, to wit, the 25th day of *March* in the 7th year of the reign of the said lord the king, and also on the day of the outlawry of the said lord *Griffin* in the same commission mentioned, to wit, *Monday* next after the feast of the purification of the

The inquisition.

[307]

Inquisition.

bleſſed virgin *Mary* in the 7th year aboveſaid, was ſeiſed in his dea mean as of fee of and in the manor of *Brabrooke*, with the appurtenances in the pariſh of *Brabrooke* in the county aforeſaid; and alſo of and in one meſſuage with the appurtenances, ſituate in the pariſh of *Brabrooke* in the county aforeſaid, now or late in the tenure or occupation of *William Winterton*; and of and in ten acres of land, five acres of meadow and five acres of paſture, lying in *Brabrooke* aforeſaid, now or late in the tenure or occupation of the ſame *William Winterton*, and of the clear yearly value in all iſſues beſides reſpites 12 l. more or leſs; and alſo of and in, &c. (*reciting the particular of all his eſtate in the ſame manner*.) And the jurors aforeſaid on their oath aforeſaid farther ſay, that *John Stone*, late of *Brabrooke* aforeſaid in the county aforeſaid, gent. from the ſaid *Monday* next after the feaſt of the purification of the bleſſed virgin *Mary* in the 7th year aboveſaid, being the ſaid day of the outlawry of the ſaid lord *Griffin*, unto the day of the caption of this inquisition, at *Brabrooke* aforeſaid in the county aforeſaid, had received the ſeveral yearly rents from the ſaid ſeveral perſons above particularly named, to and for the uſe of the ſaid *Edward* lord *Griffin*, and that the ſaid *John Stone* ought to render an account for the ſame to the ſaid lord the king: And the jurors aforeſaid on their oath aforeſaid farther ſay, that the ſaid *Edward* lord *Griffin* had no lordſhips or manors, or any other lands, tenements or hereditaments, the ſaid 25th day of *March* in the 7th year aboveſaid, nor the ſaid day of the pronouncing of the outlawry aforeſaid, or any other goods and chattels, debts, rents, ſpecialities or ſums of money, the ſaid *Monday* next after the feaſt of the bleſſed virgin *Mary*, or ever after, within the county aforeſaid, to the knowledge of the ſame jurors. In witneſs whereof to one part of this inquisition indented with us the ſaid commiſſioners remaining, and by us to the barons of the exchequer of the ſaid lord the king to be ſent and certified, as well the jurors aforeſaid have ſet their hands and ſeals, as we the ſaid commiſſioners have ſet our hands and ſeals, but to the other part of this inquisition, with the foreman of the jurors aforeſaid remaining, we the ſaid commiſſioners have ſet our hands and ſeals the day year and place firſt aboveſaid, &c. *John Clendon, John Radford, Cha. Putney, John Bradford, Joſ. Baker, William Baker, Jo. Ives, John Johnson* the mark of (C), *Benjamin Styles, Tho. Wood, S. Auſten, Ro. Tebbut, John Wells, Tho. Bull* the mark of (v), *William Rowlatt, J. Wood, Richard Sherman, R. Garratt, Sam. Taylor, Geo. Tyndall, J. Symonds.*

Yale againſt *Kirwood, knt.*

Extent in aid of
the king. Offic.
Br. 84. 87.
1 Cro. 106.
2 Cro. 179. 693.
4 Cro. 67. Plact.
Reg. 591.

George, &c. To the ſheriff of *Middleſex*, greeting: Where- as *Elihue Yale* of the pariſh of *St. Andrew Holborn* in the county of *Middleſex*, eſq; and *Mathew Kirwood*, knt. citizen and goldſmith of *London*, by their writing obligatory ſealed with their ſeal bearing date 25th day of *April* in the 4th year of our reign,

reign, are jointly and separately bound to us in 40000 *l.* of lawful money of *Great Britain*, to be paid at a certain day past, and the said 40000 *l.* to us have not yet paid, nor caused to be paid, nor hath either of them paid or caused to be paid as it is said; And we being willing to be satisfied the said 40000 *l.* to us now due, with all the speed we can as is just, command you, that you do not omit by reason of any liberty, but you enter into it, and as well by the oath of good and lawful men of your bailiwick, as by the oath and testimony of any good and lawful men of your same bailiwick, by whom the truth of the matter may be the better known, and by all other ways, means and methods you shall or may better know, diligently inquire what debts, credits, specialties and sums of money the said *Matthew Kirwood* now has in your said bailiwick, and all and singular those said debts, credits, specialties and sums of money in whose hands soever they now are, by the oath of good and lawful men diligently extend, and into our hands cause to be taken and seized, that we may have them until we are satisfied the debt aforesaid, according to the form of the statute for the recovery of such our debts thereof lately made and provided; and we farther command and impower you by these presents, to call before you all persons proper to be examined in the premisses here, of and in the same premisses diligently to be examined, lest this our present command should remain farther to be executed: And how you shall have executed this our present command, to the barons of our exchequer at *Westminster* on the 18th day of *November* next ensuing distinctly and openly certify, and have there then this writ. Witness *Thomas Bury*, *knt.* the 2d day of *September* in the 5th year of our reign, by the writing obligatory aforesaid, and by the said statute of the 33d year of the reign of the late king *Henry* the eighth, and by warrant by the barons.

Masbam.

[308]

George by the grace of God of *Great Britain, France* and *Ireland* king, defender of the faith, &c. to the sheriffs of *London*, greeting: Whereas *William F.* of the town of *H.* in the county of *H.* esq; *William D.* of the same, esq; *Daniel N.* of the parish of *St. Martin in the Fields* in the county of *Middlesex*, goldsmith, *Joseph N.* of the same, goldsmith, and *Alred C.* of *G.* in the county of *H.* aforesaid, gent. by their writing obligatory sealed with their seals, bearing date the second day of *July* in the 6th year of our reign, are bound to us jointly and severally in 6000 *l.* of lawful money, to be paid at a certain day past, and them to us have not yet paid, nor caused to be paid, as it is said: And we being willing to be satisfied, &c. to Witness *Tha. Bury*, *knt.* &c.

By the Barons.

Masbam.

Extent in aid.
4 Rep. 66, 67.
Hob. 339.
3 Lev. 134.
1 Show. 5.
2 Show. 48.
Pract. Reg.
591.

The return.

The execution of this writ appears in the inquisition to this writ annexed. The answer of *William Billers*, esq; and *Geo. Casswell*, knt. sheriffs.

The inquisition.

London, to wit. **A**N Inquisition indented, taken at the Guildhall of the city of *London* in the parish of *St. Lawrence* in the *Old Jewry* in the ward of *Cheape* of the same city, the 12th day of *October* in the seventh year of the reign of our lord *George* by the grace of God of *Great Britain, France* and *Ireland* king, defender of the faith, &c. before *William Billers*, esq; and *George Casswell*, knt. sheriffs of the city of *London* aforesaid, by virtue of a certain writ of the said lord the king to the same sheriffs directed, and to this inquisition annexed, to inquire of and upon certain matters in the same writ contained and specified, by the oath of *Robert Walker*, *Daniel Collins*, *George Stagg*, *Robert Dawys*, *William Fowler*, *Thomas Man*, *Robert Beechly*, *Charles Kent*, *Walter Preston*, *James Stasey*, *William Meadley* and *William Haidey*, good and lawful men of the bailiwick of the said sheriffs, who being sworn and charged, say on their oath, that one *F. B.* of, &c. on the day of the issuing of the same writ, to wit, on the 5th day of *October* in the 7th year aforesaid, was indebted to *D. N.* and *J. N.* in the said writ named in the sum of 104*l.* of lawful money of *Great Britain*, for the like sum of money by the said *F. B.* of the said *D. N.* and *J. N.* before then borrowed and received: And the jurors aforesaid farther on their oath say, that one *Robert O.* of the parish of *St. Martin in the Fields* in the county of *Middlesex*, jeweller, on the said day of the issuing of the same writ, to wit, on the 5th day of *October* in the 7th year aforesaid, was indebted to the said *Daniel N.* and *Joseph N.* in the sum of 14*l.* of like money of *Great Britain*, for the like sum of money by the said *Robert O.* of the said *D. N.* and *J. N.* before borrowed and received: And the jurors aforesaid farther on their oath say, that one *Andrew V.* of the parish of _____ in the county of *Middlesex*, gent. on the said day of the issuing of the same writ, to wit, on the 5th day of *October* in the 7th year aforesaid, was indebted to the said *D. N.* and *J. N.* in the sum of 3*l.* of like lawful money, for the like sum of money by the said *Andrew Vidian* of the said *D. N.* and *J. N.* before then borrowed and received: And the jurors aforesaid farther on their oath say, that one *William T.* of the parish of _____ in the county of *Middlesex*, coach-maker, on the said day of the issuing of the same writ, to wit, on the said 5th day of *October* in the 7th year aforesaid, was indebted to the said *D. N.* and *J. N.* in the sum of 56*l.* for the like sum of money by the said *W. T.* for the use of the said *D. N.* and *J. N.* before then had and received: And the jurors aforesaid farther on their oath say, that one *G. F.* of, &c. in the county of *Middlesex*, gent. on the said day of the issuing of the same writ, to wit, on the said 5th day of *October* in the 7th year aforesaid, was indebted to the said *D. N.* and *J. N.* in the sum of 100*l.* for the like sum of money

The jury.

The credits of the debtor.

Money lent.

Money received to his use.

money by the said *G. F.* for the use of the said *D. N.* and *J. N.* before then had and received: And the jurors aforesaid farther on their oath say, that one *J. K.* of in the county of *Middlesex*, mercer, on the said day of the issuing of the same writ, to wit, on the said 5th day of *October* in the 7th year abovesaid, was indebted to the said *D. N.* and *J. N.* in the sum of 20*l.* for the like sum of money by the said *John Kirke* for the use of the said *D. N.* and *J. N.* before then had and received: And the jurors aforesaid farther on their oath say, that one *B.* of on the said day of the issuing of the same writ, to wit, on the said 5th day of *October* in the 7th year abovesaid, was indebted to the said *D. N.* and *J. N.* in the sum of 40*l.* for the like sum of money by the said *B.* for the use of the said *D. N.* and *J. N.* before then had and received: And the jurors aforesaid farther on their oath say, that one *S. B.* of, &c. in the county aforesaid, esq; on the said day of the issuing of the same writ, to wit, on the said 5th day of *October* in the 7th year abovesaid, was indebted to the said *D. N.* and *J. N.* in the sum of 100*l.* for the like sum of money by the said *S. B.* for the use of the said *D. N.* and *J. N.* before then had and received: And the jurors aforesaid farther on their oath say, that *D. S.* on the said day of the issuing of the same writ, to wit, on the said 5th day of *October* in the 7th year abovesaid, was indebted to the said *D. N.* and *J. N.* in the sum of 28*l.* 11*s.* of like lawful money, for divers goods, wares and merchandizes, by the said *D. N.* and *J. N.* to the same *S.* before then sold and delivered: And the jurors aforesaid farther on their oath say, that *D. S.* on the said day of the issuing of the same writ, to wit, on the 5th day of *October* in the 7th year abovesaid, was indebted to the said *D. N.* and *J. N.* in the sum of 80*l.* 7*s.* of like lawful money of *Great Britain*, for divers goods, wares and merchandizes, by the said *D. N.* and *J. N.* to the said *D. S.* before then sold and delivered: And the jurors aforesaid on their oath farther say, that one *P. B.* of *Limington* in the county of *South'ton*, esq; and *A. M.* of the parish of *S. A. Westminster* in the county of *Middlesex*, widow, by their writing obligatory sealed with the seals of them the said *P.* and *A.* bearing date the 6th day of *Februry* 1718, became held and bound to the said *D. N.* and *J. N.* in 200*l.* of lawful money of *Great Britain*, to be paid to the same *D. N.* and *J. N.* when they should be thereto after required; which said writing obligatory aforesaid, as also the money thereon due, we the said sheriffs, by virtue of the writ aforesaid, have caused to be extended, and into the hands of the said lord the king to be taken and seised: And the jurors aforesaid farther on their oath say, that *H. C.* of the parish, &c. *Westminster* in the county of *Middlesex*, gent. was indebted to the said *D. N.* and *J. N.* in the sum of 220*l.* of like lawful money of *Great Britain*, for the like sum of money by the said *D. N.* and *J. N.* to the said *H. C.* accommodated and lent; and that the said *H. C.* by his certain writing duly made, bearing date 27th day of *June* 1719, for the

[309]

Book debts.

A debt by specialty.

Assignment of an
army debenture
as a security for
money lent.

the consideration in the same mentioned, assigned, transferred and set over to the said *D. N.* his executors, administrators and assigns, all his full pay or bounty-money of 200*l.* per ann. given or granted him by the said lord the king, payable to the said *H. C.* by equal quarterly portions, out of the revenue of the said lord the king of the civil list, or otherwise; and the said *H. C.* by virtue of the same, authorized and impowered the said *D. N.* his executors, administrators and assigns, from time to time, and at all times afterwards, when and as often as they were payable and paid, to ask, demand and receive of and from *W. C.* esq; pay-master of the said lord the king's pensions or bounty-money, or of the pay-master thereof, or any other person or persons whomsoever for the time being authorized and appointed to pay the same, and that his or their receipt or receipts, acquittance or acquittances, should be a full and sufficient discharge thereof: and that there was due to the said *H. C.* from the said lord the king, by the hands of the said *W. Chetwynd*, esq; the sum of 200*l.* of lawful money, for a year ended at the feast of *St. Michael* last past: And the jurors aforesaid farther on their oath say, that the writing aforesaid was made and executed by the said *H. C.* to the said *D. N.* to secure and to repay to the said *D. N.* the sum of 220*l.* advanced by him the said *D. N.* to the said *H. C.* which yet remains due and unpaid: And the jurors aforesaid on their oath aforesaid farther say, that *D. N.* and *J. N.* in the writ of extent aforesaid named, on the day of the issuing of the same writ, to wit, on the said 5th day of *October* in the 7th year above said, and at the time of the caption of this inquisition, were possessed and intitled in our bailiwick, as of their own proper goods and chattels of, in and to several goods, chattels, writings and sums of money in the first schedule or inventory to this inquisition annexed particularly mentioned, of the several values of the sums in the said schedule or inventory to the same respectively put and set, as by the jurors aforesaid appraised: And the jurors aforesaid on their oath aforesaid farther say, that the said *D. Norcott* and *J. Norcott* on the day of the issuing of the writ of extent aforesaid, to wit, on the said 5th day of *October* in the 7th year above said, and at the time of the caption of this inquisition, were possessed and intitled in our bailiwick, as of their own proper goods and chattels, in and to several writings and sums of money in the second schedule or inventory to this inquisition annexed particularly mentioned, and several persons in the second schedule or inventory in that behalf particularly named, were at the same times respectively possessed of the same writings and sums of money in trust for the same *D. N.* and *J. N.* all which said goods, chattels, debts, writings and sums of money, we the said sheriffs on the said day of the caption of this inquisition, by virtue of the writ aforesaid, have caused to be extended, and into the hands of the said lord the king taken and seised: And the jurors aforesaid farther on their oath aforesaid say, that *D. N.* and *J. N.* in the said writ named, on the 2d day



Inquisition.

‡ 399

day of *July* in the 6th year of the reign of the lord the king, on which day they first became debtors therein to the said lord the king, or ever after hitherto had not, nor had either of them, any lands or tenements, nor have the said *D. N.* and *J. N.* or hath either of them, any other or more goods or chattels, debts, credits, specialties or sums of money in the hands of any person or persons whomsoever in the bailiwick of the said sheriffs, to the notice of the same jurors, which now can be extended, appraised, or into the hands of the said lord the king taken or seised. In witness whereof as well the said sheriffs as the jurors aforesaid to this inquisition their seals have caused to be set the day and year above-said.

The first schedule or inventory of the goods, chattels, writings and sums of money of Daniel N. and Joseph N. in the writ and inquisition annexed named, seised by William Billers, esq; and George Caswell, knt, sheriffs of the city of London, by virtue of the writ aforesaid in the inquisition aforesaid mentioned, to wit,

The first schedule.

A subscription receipt (N^o 115) dated the 14th of *April* 1720, under the hand of *Robert Knight*, cashier of the governor and company of merchants of *Great Britain* trading to the *S. S.* and other parts of *America*, and for encouraging the fishery, for 600*l.* lawful money of *Great Britain*, subscribed and paid to the said *Robert Knight*, for the use of the said governor and company of merchants for 500*l.* capital stock in the said company at the rate of 300*l.* per cent.

l. s. d.

500 0 0

In plate.

Twelve spoons, twelve knives, twelve forks, one saucepan, one mug, one salver, one pepper-box, two salts, two porringers, three tea spoons, and a case for the knives and forks. Weight 94 ounces 13 penny weight, at 5*s.* 4*d.* per ounce.

20 0 0

The

The second schedule.

The second schedule or inventory of the writings and sums of money of Daniel and Joseph N. in the writ and inquisition annexed named, seised by William Billers, esq; and George Caswell, knt. sheriffs of the city of London, by virtue of the writ aforesaid in the inquisition aforesaid mentioned, whereof several persons within named were respectively possessed in trust for the same Daniel and Joseph,

One thousand pounds lottery annuity stock subscribed into the capital stock of the governor and company of merchants of Great Britain trading to the S. S. and other parts of America, and for encouraging the fishery, in the name of one Richard Norton in trust and for the use of the said D. and J. N.	£ s. d. 1000 0 0
---	-----------------------------

A subscription receipt for 1000 <i>l.</i> of lawful money of Great Britain, subscribed and paid by the said D. and J. N. to Robert Knight cashier of the governor and company of merchants trading to the South-Seas and other parts of America, and for encouraging the fishery, for the use of the said governor and company of merchants for 500 <i>l.</i> capital stock in the said company, at the rate of 1000 <i>l.</i> per ann. in the name of one T. N. in trust and for the use of the said D. and J. N.	1000 0 0
--	--------------

Twenty pounds capital stock in the South-Sea company in the name of one John B. in trust and for the use of the said D. N.	40 0 0
--	------------

Ten shares in the capital or principal stock of the corporation or body politick, called by the name of the London Assurance, in the name of one R. N. in trust and for the use of the said D. and J. N.	150 0 0
--	-------------

2827 0 0

Prohibition.

311

Prohibition.

Byne and Dodderidge.

Pleas at Westminster before Edward Nevil, knt. John Powell, knt. and John Blencowe, knt. justices of the lord the king of the bench of Hillary term in the 12th year of the reign of the lord William the third of England, &c. king. Roll 1609.

Suffex, to wit, **J**OH^N Dodderidge, clerk, rector of the rectory of the parochial church of *Whatlington* in the county aforesaid, was attached to answer as well the lord the king as *Edward Byne* in a plea, why he prosecuted a plea against the same *Edward* in the court christian against the prohibition of the said lord the king, &c. And whereon the same *Edward* by *Francis Doyly* his attorney complains, that whereas the said *Edward Byne* was seised in his demesne as of fee of and in a certain farm called *Walters Wish* with the appurtenances in the parish of *Whatlington* aforesaid in the county aforesaid, of the yearly value of 20*l*. and the same *Edward*, and all other occupiers and possessors of the same tenements with the appurtenances for the time being, for time immemorial have used and been accustomed to pay and render to the rector of the rectory of the parochial church of *Whatlington* aforesaid for the time being, or his farmer of that rectory, yearly on the feast of *St. Michael* the archangel, or whensoever after that feast he should be required, 40*s*. being 2*s*. for every 20*s*. rent of the tenements aforesaid with the appurtenances of and for the full and entire contentation, satisfaction and discharge of all and singular tithes whatever of, in and upon the tenements aforesaid with the appurtenances howsoever growing, arising, renewing or happening; which said 40*s*. yearly as aforesaid payable and paid, all and singular the rectors of the rectory of the church aforesaid for the time being, or their farmers of the rectory aforesaid for the whole time aforesaid, of the proprietors or occupiers of the same tenements with the appurtenances in full satisfaction, contentation, payment and discharge, and in the name and stead of all and singular tithes whatever of, in and upon the tenements aforesaid with the appurtenances howsoever growing, arising, renewing or happening, have received and had, and the custom and manner of tithing aforesaid for the tithes aforesaid for all the time aforesaid have inviolably observed: Nevertheless the said *John Dodderidge*, not ignorant of the pre-

Declaration in prohibition on *anodys* to pay 40*s* yearly for the tithe of farm.

misses,

Prohibition.

[312]
The libel.

misses, contriving and intending him the said *Edward*, against the due form of the law of this kingdom of *England*, and against the form and effect of divers statutes for tithes, and the manner of tithing made and provided, and against the prescription, custom and manner of tithing aforesaid, unduly to aggrieve, oppress and fatigue, and also the said lord the now king and his royal crown to disinherit, and the cognisance of the plea, which to the said lord the now king and his royal crown, and not to the ecclesiastical court, in this behalf belongs, to another examination in the court christian to draw, the same *Edward* in the court christian before the reverend and excellent man *Thomas Briggs*, doctor of laws, of the reverend father in Christ *John*, by divine permission lord bishop of *Chichester*, in and thro' the whole archdeanry of *Lewis* in the diocese of *Chichester* commissary or official principal lawfully constituted, or his surrogate or other judge whatever in that behalf competent, hath drawn in plea of and for the subtraction and non-payment of tithes, in a certain schedule to a certain libel affixed mentioned, craftily and subtilly libelling against the said *Edward* in the same court christian, in the manner and form following, to wit, *Imprimis*, to wit, that the said *John Dodderidge*, clerk, in the months of *September, October, November, December, January, February* and *March* 1698, and in the whole year 1699, in every such years and months was and at present is rector of the rectory of the parochial church of *Whatlington* aforesaid, and of all and singular the tithes, rights and emoluments ecclesiastical whatever to the same rectory belonging and appertaining, and to and in the same rectory with all its rights and appurtenances rightfully and lawfully admitted, instituted and inducted, and for such and as such the same *John Dodderidge* was and is commonly called, held, had and reputed, openly, publickly and notoriously; and the party proponent propounds them jointly and severally, and of every item as well of common right as of and from an ancient, laudable and lawfully prescribed custom, and for time immemorial inviolably observed, and in contradictory judgment often or once obtained, the right of receiving and having all and singular the tithes, rights, emoluments ecclesiastical whatsoever, and especially the tithes of things tithable in the schedule to these presents annexed mentioned, which schedule the party proponent desires and prays may be taken as here read and inserted, as is proper for him, and not otherwise, within the parish of *Whatlington* aforesaid, and the bounds, limits and places tithable of the same, arising, growing, renewing and happening to the rectors and their farmers of the rectory aforesaid for their times successively being, and so to the said *John Dodderidge* for the whole, and all the time that he hath been rector there, hath belonged and appertained, and so doth belong and appertain, and so to belong and appertain hath ought, and ought at present; and he propounds as above. *Item*, that for these 20, 30, 40, 50, 60 and 80 years last past, and also for time out of mind, the rectors and their farmers

of the
for, an
idge, th
quiet,
of taki
things
cially th
of *Wh*
ble of
them b
their o
John
ten, re
ought
lum,
article
some
in the
and p
things
presen
desire
per fo
own
of the
afore
respec
same
spect
thele
quan
afore
proof
as a
this
the
reign
othe
If an
tithe
his t
tithe
prie
and
tent
ma
her
awa
valu
awa

of the rectory aforesaid in their times successively, the predecessors, and all and every the predecessors of the said *John Dodderidge*, the present rector there, were, as they ought to be, in the quiet, full and peaceable possession of the right, or as the right of taking, receiving and having all and singular the tithes of things tithable, rights and emoluments ecclesiastical, and especially the tithes of things tithable within written within the parish of *Whatlington* aforesaid, and the bounds, limits and places tithable of the same, arising, growing, renewing and happening, and them by themselves or their farmers have received, had, and to their own proper use converted, and every of them; and the said *John Dodderidge* for his time, saving the grievances within written, respectively hath had, taken, received, was and is, and hath ought to be, and ought at present; and he propounds as above. *Item*, that in all and singular the years and months in the first article of this libel mentioned, and in every more than one or some of the same months and years, the said *Edward Byne* within the parish of *Whatlington* aforesaid, and the bounds, limits and places tithable of the same, all and singular the tithes and things tithable, and the species of tithes in the schedule to these presents annexed specified, which schedule the party proponent desires and prays may be taken as here read and inserted, as is proper for him, and not otherwise, hath had, received, and to his own proper use converted and applied, and that the true value of the tithes, things tithable, and species of tithes in the schedule aforesaid mentioned and specified to the several sums and values respectively in the said schedule mentioned, and to which in the same they are respectively valued, and at the time when the respective tithes were due did amount and doth amount; and nevertheless the party proponent propounds of every other number and quantity, and price or value of the things and species of tithes aforesaid, and of such and so much, as and how much by lawful proof in the event of this suit shall appear; and he propounds as above. *Item*, that among other good laws and statutes of this kingdom of *England*, especially in the 13th chapter of the sessions of parliament in the second and third years of the reign of *Edward the sixth*, late king of *England*, it is among other things enacted in the tenor of the words following, to wit, If any person carry away his corn or hay, or his other predial tithes, before the tithe thereof be set forth, or willingly withdraw his titles of the same, or of such other things whereof predial tithes ought to be paid, or do stop or let the parson, vicar, proprietor, owner or other their deputies or farmers, to view, take and carry away their tithes, by reason whereof the said tithe or tenth is lost, impaired or hurt; if then upon due proof thereof made before the spiritual judge, or any other judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay the double value of the tenth or tithe so taken, lost, withdrawn or carried away, over and besides the costs, charges and expences of the suit

2 & 3 E. 6. c. 13.
§ 2. par. 2.

suit in the same, the same to be recovered before the ecclesiastical judge, according to the king's ecclesiastical laws; as in the said statute among other things more fully is contained; and he propounds as above. *Item*, that the before named *E. B.* for the whole and all the time in this behalf libellate was and is a meer layman, and no right or title had or hath in the rectory of *Whatlington* aforesaid, or in the tithes or rights ecclesiastical to the same belonging: Nevertheless all and singular the tithes and things tithable in the schedule to these presents annexed mentioned, from the place or places in which they grew, renewed and ought to be tithed, before the tithes thereof due, or the tenth part of the same from the other nine parts he had divided or separated, or otherwise with the before named *John Dodderidge* had compounded for the same, beside and against the will of the same *John Dodderidge* did take and carry away, or so to be taken and carried away did cause and command, not regarding the penalty in the statute above in the fifth article libellate and mentioned. *Item*, that the said *Edward Byne* to pay and deliver to the before named *John Dodderidge*, or his party, the tithes of the things tithable aforesaid above libellate, or otherwise duly to compound with the said *John Dodderidge* for the same, on the part of the said *John Dodderidge*, often or once earnestly and lawfully asked and required, the premisses nevertheless, or any of them to do, hath expressly denied and refused, or at least unjustly hath deferred, and at present doth defer; and he propounds as above. *Item*, that the said *Edward Byne* was and is a parishioner of *Whatlington* aforesaid in the archdeanary aforesaid, and for that reason to the jurisdiction of this court notoriously subject and liable; and he propounds as above. *Item*, that of and upon the premisses all and singular it was and is, on the part and by the part of the before named *John Dodderidge*, to you Sir the official aforesaid and this court rightfully and lawfully querelate; and he propounds as above. *Item*, that the premisses all and singular were and are true, publick, notorious, manifest also and famous, and of and upon the same hath been, and is the publick talk and report; wherefore proof being made of the right in this behalf requisite, the party proponent prays right and justice to be done and administered to him with effect, and the said *Edward Byne* the penalty in the statute aforesaid to have incurred, and to the payment of the tithes aforesaid, or the double value of them, as it shall appear to be forced and compelled, and also in the charges of the suit on the part and by the part of the before named *John Dodderidge* in this behalf expended, and to be expended, and to him or his party to be condemned to pay, and condemned to the due payment of the same lawfully to be forced and compelled by you, and your definitive sentence or your final decree in this behalf to be made, and farther to be done, order'd and decreed in the premisses, and every thing concerning them, what shall be the right and reason of the premisses propounding jointly and severally, and not obliging himself to prove all and

singular

Singular the premisses, nor to the burden of a superfluous proof, against which he protests, but so far as he shall prove in the premisses so far he may obtain in his demand, the benefit of the law in all things always saved, your office Sir the judge aforesaid humbly imploring, the schedule of which in the libel aforesaid mention is made follows. *Imprimis*, That the said *Edward Byne* named in the libel hereunto annexed, in the years and months in the first article of the said libel mentioned, all and every, some or one of them had, held, occupied, possessed and enjoyed certain lands, fields and grounds, situate, lying and being within the parish of *Whatlington*, and tithable places thereof, and in and upon the same, and within the said parish and tithable places thereof had and kept going, feeding, coming, renewing, increasing, happening, fallen, cut and mown these several quantities, parcels and numbers of hay, cattle, and other things following, *viz.* *Imprimis*, 12 acres of meadow-ground which he had caused to be mown, and thereupon had four and twenty wain-loads or carriages of hay mowed and made in the year 1699, libellate each wain-load or carriage thereof worth twenty shillings of lawful money of *England*. *Item*, four acres of hop-ground in the year 1699, libellate each acre worth fifteen pounds of like lawful, &c. *Item*, one piece of ground sowed with hemp-seed, and thereupon had hemp and hemp-seed worth twenty shillings of like lawful, &c. *Item*, one piece of ground sowed with flax-seed, and thereupon had flax and flax-seed worth thirty shillings of like lawful, &c. *Item*, four milk kine every year libellate the milk of each cow worth weekly three shillings of like lawful, &c. *Item*, four calves yearly, each worth at tithing-time eight shillings of like lawful, &c. *Item*, twenty acres of coppice-ground, and from thence cut and sold yearly and every year libellate six cord of wood, each cord worth eight shillings of like lawful, &c. *Item*, six barren, dry, idle fattening cattle yearly, the depasture of each of them worth weekly twelve pence of like lawful, &c. *Item*, twenty ewe sheep yearly, and of them had yearly twenty lambs, each worth at tithing-time three shillings of like lawful, &c. *Item*, one hundred weight of wool yearly, shorn from sixty sheep yearly, each pound worth at shearing-time twelve pence of like lawful, &c. *Item*, twenty pigs yearly, and every year each worth at tithing-time three shillings of like lawful, &c. *Item*, ten hens, and of them had five hundred eggs, every four of them worth one penny, *Item*, twenty goslings, or young geese, each of them worth twelve pence. *Item*, twenty young turkies, each of them worth twelve pence. *Item*, apples, and other orchard fruit, and garden fruit and herbs of all sorts, worth yearly twenty shillings, as by the copy of libel and schedule aforesaid here in court produced more fully is manifest and appears; and him the said *Edward* in the said court christian before the said judge spiritual to appear, and to the same *John* of and upon the premisses to answer hath unjustly compelled: And altho' the same *Edward* in every year of the

The libel.

[314]

the years aforesaid on the said feast of St. Michael the archangel, at *Whatlington* aforesaid, was ready and offered, and yet is ready to pay, the said *John* the said 40 s. according to the form and effect of the prescription and manner of tithing aforesaid, and the same in the court christian aforesaid before the said judge spiritual, according to the custom and manner of tithing aforesaid, in the suggestion aforesaid specified, against the said *John* hath pleaded, alledged, and the same with inevitable truth and evidence hath offered to prove: Nevertheless the same judge spiritual hath altogether refused to admit or receive that plea and allegation, and the said *John* him the said *Edward*, by the definitive sentence of the said court christian of and upon the premises to cause to be condemned, with all his might endeavours and daily contrives, in contempt of the said lord the now king, and to the manifest damage, prejudice, impoverishment and grievance of him the said *Edward*, and against the form of the law of this kingdom of *England*, and the prescription aforesaid, altho' the said *E. Byne* on the first day of *August* in the 12th year of the reign of the lord the now king, at *Whatlington* aforesaid, delivered to the said *John Dodderidge* the writ of the lord the king of prohibition to the contrary thereof; yet the said *John* hath not ceased farther to prosecute that plea, but the plea aforesaid in the said court christian hath farther prosecuted the writ of the said lord the king of prohibition to him to the contrary directed in any wise notwithstanding, in contempt of the said lord the now king, and to the great damage of the said *E. Byne*, and contrary to the prohibition aforesaid; whereby he says that he is prejudiced, and hath damage to the value of 20 l. And therefore he produces the suit, &c.

Hea for a consultation.

That the rector always received the tithe in kind; and because the plaintiff withdrew them he sued him in the spiritual court.

And the said *John* by his attorney comes and defends the force and injury when, &c. and says, that he the said *John* hath not prosecuted the plea in the court christian against him the said *Edward* after the royal prohibition to him to the contrary thereof first directed and delivered, in the manner and form as the said *Edward*, who as well, &c. above against him complains: And of this he puts himself on the country: And the said *Edward*, who as well, &c. likewise, &c. But to have and obtain the writ of the lord the king of consultation in this behalf, the same *John* says, that all the tenants, possessors and occupiers of the said farm with the appurtenances in the parish of *Whatlington* aforesaid in the county in the declaration aforesaid above mentioned for the time being, have from time out of mind rendered, yielded and paid, and for all the said time have been used, accustomed and ought to render, yield and pay to the rector of the rectory of the parochial church of *Whatlington* aforesaid for the time aforesaid being, all and all manner of tithes of grain, hay, and other things tithable in and upon the same lands and farm with the appurtenances yearly for all the same time happening, growing or renewing, or otherwise, with the same rector or his farmer, or deputy of that rectory for the time being

for th
Edwa
ment
Walt
of the
ration
and b
the p
tithe
secut
judge
the d
that l
of th
were
the r
afore
on th
be re
ment
whol
tithe
appu
penin
and
for t
the t
cupie
factio
and
tence
arise
had,
tithe
as th
supp
judg
him
A
thing
from
nor
gran
fame
fame
time
the
afore
on
that
rent
V

for those tithes have agreed and compounded; and because the said *Edward* the tithes aforesaid in the libel and declaration aforesaid mentioned in and upon the farm and tenements aforesaid, called *Walters Wish*, with the appurtenances as aforesaid, in the occupation of the said *Edward* in the said years and times in the libel and declaration aforesaid expressed and specified, growing, renewing, arising and happening, from the same *John*, being then and yet rector of the parochial church of *Whatlington* aforesaid, withdrew, and those tithes to the same *John* in kind refused to pay, the same *John* prosecuted the said *Edward* in the said court christian before the said judge spiritual before the issuing of the said writ of prohibition in the declaration aforesaid specified, as he well might; without that, that he the said *Edward*, and all other occupiers and proprietors of the same tenements with the appurtenances for the time being, were time out of mind used and accustomed to pay and render to the rector of the rectory of the parochial church of *Whatlington* aforesaid for the time being, or his farmer of that rectory, yearly on the feast of *St. Michael*, or whensoever after that feast he should be required, 40 s. being 2 s. for every 20 s. rent for the tenements aforesaid with the appurtenances of and in the full and whole contentation, satisfaction and discharge of all and singular tithes whatever of, in and upon the tenements aforesaid with the appurtenances howsoever growing, arising, renewing or happening; which said 40 s. yearly as aforesaid payable and paid, all and singular the rectors of the rectory of the church aforesaid for the time being, or their farmers of the rectory aforesaid for the time being, for all the time aforesaid of the proprietor or occupier of the same tenements with the appurtenances in full satisfaction, contentation, payment and discharge, and in the name and stead of all and singular tithes whatever of, in and upon the tenements aforesaid with the appurtenances howsoever growing, arising, renewing or happening, have accepted, received and had, and the custom and manner of tithing aforesaid for the tithes aforesaid for all the time aforesaid have inviolably observed, as the said *Edward*, who as well, &c. by his declaration above supposes: And this he is ready to verify: Wherefore he prays judgment, and the writ of the lord the king of consultation to him in this behalf to be granted, &c.

Traverse of the
modus.

[315]

And the said *Edward*, who as well, &c. says, that he by any thing by the said *John* before alledged ought not to be precluded from having his action aforesaid thereof against him the said *John* nor ought the writ of the lord the king of consultation to be granted to the said *John*, because he as before says, that he the same *Edward*, and all other occupiers and proprietors of the same tenements with the appurtenances for the time being, have time out of mind been used and accustomed to pay and render to the rector of the rectory of the parochial church of *Whatlington* aforesaid for the time being, or his farmer of that rectory, yearly on the feast of *St. Michael* the archangel, or whensoever after that feast he should be required, 40 s. being 2 s. for every 20 s. rent of the tenements aforesaid with the appurtenances of and

Reply and issue
on the traverse.

Prohibition.

for the full and whole contentation, satisfaction and discharge of all and singular tithes whatever of, in and upon the tenements aforesaid with the appurtenances howsoever growing, arising, renewing or happening; which said 40 s. yearly as aforesaid payable and paid, all and singular the rectors of the rectory of the church aforesaid for the time being, or their farmers of the rectory aforesaid, of the proprietor or occupier of the same tenements with the appurtenances, in full satisfaction, contentation, payment and discharge, and in the name and stead of all and singular tithes whatever of, in and upon the tenements aforesaid with the appurtenances howsoever growing, arising, renewing or happening, have accepted, received and had, and the custom and manner of tithing aforesaid for all the time abovesaid have inviolably observed, in manner and form as he the said *Edward*, who as well, &c. by his declaration aforesaid above hath supposed: And this he prays may be inquired of by the country: And the said *John* likewise: Therefore the sheriff is commanded, that he cause to come here in the octave of the purification of the blessed *Mary* 12, &c. and who neither, &c. to recognize, &c. because as well, &c.

The *Jurata*.

13 E. 1. c. 30.

12 E. 2. c. 4.

14 E. 3. c. 15.

Suffex, to wit. **T**HE jury between *Edward Byne*, who as well, &c. plaintiff, and *John Dodderidge*, clerk, rector of the rectory of the parochial church of *Whatlington* in the county aforesaid, in a plea of prohibition, is respited here until from the day of *Easter* in 15 days, unless the justices of the lord the king, assigned to take assises in the county aforesaid, by the form of the statute, &c. shall first come on *Friday* the 4th day of *April* at *Eastgrinstead* in the county aforesaid, for want of jurors, because none come: therefore let the sheriff have the bodies, &c. And be it known, that the writ thereof the justices here in court have delivered to the under-sheriff of the county aforesaid in form of law to be executed, &c.

The *Posse*.

Tales.

Suffex, to wit. **A**fterwards the day and year within contained, before *John Holt*, knt. chief justice of the lord the king, assigned to hold pleas before the king himself, and *Robert Tracy*, esq; one of the barons of the exchequer of the said lord the king, justices of the said lord the king, assigned to take assises in the county of *Suffex*, by the form of the statute, &c. comes the within named *Edward Byne*, who as well, &c. by his attorney within contained, and the within written *John Dodderidge*, clerk, altho' solemnly called doth not come, but hath made default; therefore the jury, whereof mention is within made, is taken against him by default; whereupon the jurors of that jury being called, some of them, to wit, *J. Hicks*, *J. Grover* and *T. Parsons* come, and on that jury are sworn; and because the rest of the jurors of the same jury have not appeared, therefore others from the by-standers of the sheriff of the county aforesaid hereto elected, at the request of the said *Edward Byne*, who as well, &c. and by the command of the justices aforesaid, are added anew, whose names are annexed to the panel within written, according

According to the form by the statute in such case made and provided; and the jurors so added anew, to wit, *James Life, W. Nicholas, W. Osmer, John Napper, Richard Scragg, John Elliott, John Rogers, Henry Barnes and Edward Kempe*, being called likewise come, who to say the truth of the within contained, together with the other jurors aforesaid first impanelled and sworn, were elected, tried and sworn, and from the bar here to give their verdict thereon to talk together retired, and having thereon talked together and agreed to give that verdict to the bar here returned; whereupon the said *Edward Byne*, who as well, &c. altho' solemnly called doth not come, nor farther prosecute his writ within specified against the said *John Dodderidge, &c.*

35 H. 8. c. 6.
7 & 8 W. 3.
c. 32. § 3.
3 G. 2. c. 25.

Morris against Oldys and another.

[316]

London, to wit. *James Morris*, who as well for the lord and lady the king and queen as for himself in this behalf prosecutes, puts in his place *J. Lilly* his attorney, against *William Oldys*, doctor of laws, and *Henry St. George*, knt. clarenceux king at arms, in a plea of trespass and contempt, for that they prosecuted in the court of honour of *Henry duke of Norfolk*, lord earl marshal of *England*, after the royal prohibition to the contrary thereof to them directed and delivered.

Warrant of attorney in a prohibition.

London, to wit. **B**E it remember'd, that on *Friday* next after the morrow of the *Holy Trinity* in that same term before the lord and lady the king and queen at *Westminster* came *James Morris*, who as well for the lord and lady the king and queen as for himself in this behalf prosecutes by *J. L.* his attorney, and produced here in the court of the said lord and lady the king and queen then there his certain bill against *W. Oldys*, doctor of laws, and *Henry St. George*, knt. clarenceux king at arms, in the custody of the marshal, &c. in a plea of trespass and contempt, for that they prosecuted in the court of honour of *Henry duke of Norfolk*, lord earl marshal of *England*, after the royal prohibition to them to the contrary thereof directed and delivered; and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *James Morris*, who as well for the lord and lady the king and queen as for himself in this behalf prosecutes, complains of *W. Oldys*, doctor of laws, and *Henry St. George*, knt. clarenceux king at arms, being in the custody of the marshal of the *Marshalsey* of the lord and lady the king and queen before the king and queen themselves, in a plea of trespass and contempt, for that they prosecuted in the court of honour of *Henry duke of Norfolk*, lord earl marshal of *England*, after the royal prohibition to them first to the contrary thereof directed and delivered, for this, to wit, that whereas by the statute of *Magna Charta* of the liberties of *England*, made at a parliament held at *Westminster* in the county of *Middlesex* in the 9th year of the reign of the lord *Henry the third*, late king of *England*, it is ordained and established, That no freeman should be taken or imprisoned, or be disseised of his freehold or liberties, or

Declaration on a prohibition to the court of honour to stay a suit there for marshalling a funeral without licence. *Farr, Rep. 125.*

9 H. 3. c. 29.

free customs, or be outlawed or exiled, or any otherwise destroyed; nor the lord the king would not pass upon him nor condemn him but by lawful judgment of his peers, or by the law of the land; and that the same late king would sell to no man, would not deny or defer to any man either justice or right, as in the said statute more fully is contained: And whereas also the said *John Morris* is a freeman of this kingdom, and ought to enjoy the liberties and free customs of this kingdom of *England*, and contrary to the same ought not in any wise to be disquieted or molested: Nevertheless the said *W. Oldys*, doctor of laws in the court of honour of the said *Henry* duke of *Norfolk*, lord earl marshal of *England*, advocate of the king and queen, of the premises not ignorant, but contriving and intending him the said *James Morris* unjustly and wrongfully to oppress, and with very great expences to fatigue, and from the common law of this kingdom of *England* to derogate, in the said court of honour of the said *Henry* duke of *Norfolk* before him the said *Henry* duke of *Norfolk*, then and yet being lord earl marshal of *England*, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, exhibited certain articles against him the said *James Morris*, by which said articles the said *Henry* duke of *Norfolk*, at the promotion of the said *W. Oldys*, objected and articulated, that for 2, 3, 4, 5, 6, 7, 8, 9, 10, and more years elapsed, the said *Henry St. George* was and is one of the kings at arms, to wit, clarenceux king at arms, by royal authority, by virtue of a commission under the great seal of *England* rightfully and lawfully constituted, and for such commonly reputed, and that the cognisance, correction and disposition of arms and ensigns, and the ordering, direction and disposition of funeral pomps to the kings at arms, according to their respective provinces, and to their officers in that behalf lawfully constituted, and so to the said *Henry St. George*, knt. clarenceux king at arms, within his province, and to the said clarenceux king at arms for the time being, from time to time hath belonged and so doth belong, and ought to belong; and that the premises aforesaid were and are to the said *James Morris* well known, at least that the said *James* hath heard it so said. Item, that the said *Henry St. George*, knt. clarenceux king at arms, was and is king at arms at the south, east and west parts of this kingdom of *England*, to wit, from the river called *Trent* towards the south; and that the said *J. Morris* within the parish of *St. Vedast*, otherwise *Foster-lane*, *London*, and within the province of the said clarenceux king at arms, for some years past hath dwelt and now doth dwell, and to the jurisdiction of the court aforesaid was and is notoriously subject and liable. Item, that the said *James Morris* never had nor hath any licence or authority from the said *Henry St. George*, clarenceux king at arms, to paint, or cause and procure to be painted, any arms and escutcheons, or shields of arms and escutcheons, or to marshal the funerals of any person or persons within his said province dying and buried, or to be buried. Item, that notwithstanding the premises, but the same being true, the said *James Morris* well knowing in the months of *March*, *April*, *May*, *June*, *July*, *August*,

gust, September, October, November, December, January, February and March, in the year of the Lord 1698, or of the same months in more than one or some, without any lawful authority or faculty in that behalf obtained, and in contempt of the jurisdiction of the said *Henry* duke of *Norfolk*, and the office and law of arms, and to the manifest injury of the nobility and gentry of this kingdom of *England*, the funeral pomps of divers deceased within the said province of the said clarenceux king at arms dying and buried took upon himself to order, direct and marshal, and the same did order, direct and marshal, and the shield of arms for them painted, or caused to be painted, and the same funeral pomps, or very many, in manner and form by the law of arms in no manner to be approved and permitted, and in manner and form also to the degrees of the said deceased in no wise proper, permitted, or to be permitted, to order, direct and marshal, however presumed and durst; and especially in the month of *July*, or thereabouts, in the year of the Lord 1691, he the said *James Morris* the funeral pomp of the lady *Judith Herne*, widow, of *Canbury* in or near the parish of *St. Mary Islington* in the county of *Middlesex*, deceased, in the manner and form in the first schedule to the articles aforesaid annexed described, or in a manner and form very like; which said schedule follows in these words, letters and figures, to wit, the first schedule, The manner of the lady *Herne's* lying in state in *Brewers-hall* the 14th *July* 1691. All the hall from the top to the bottom was hung with black, and the upper end of the said hall where the corps was placed was likewise ceiled with bays, the corps was covered with a pall of black velvet lined with white sarcenet, and upon the pall 12 silk escutcheons pinned thereon; and at the end of the said corps was a majesty, and between twenty and thirty silk and buckram escutcheons, and upon stands of each side of the corps were between thirty and forty great wax tapers, besides those that were up in sconces, which made in all about the corps between sixty or seventy; all this was within a rail covered with black bays. *William Russel* the coffin-maker, and *James Morris* the joiner, marshalled this funeral on the said 14th *July* 1691. They put eight aldermen to support the pall, and placed the mourners, and invited guests in order. And in the month of *November*, or thereabouts, in the year of the Lord 1691, the funeral pomp of *Towers* deceased, in the parish church of *St. Andrew Holborn, London*, buried, in the manner and form in the second schedule to the articles aforesaid annexed described, or in a manner and form very like; which said schedule follows in these words, letters and figures, to wit, the second schedule, Mrs. *Towers* November 6th 1691, buried at *St. Andrew's Holborn*; the corps was laid in state in one of the new houses at the farther end of *Grays-Inn-Lane*, the room was hung with deep mourning, the floor was covered with black bays, the room adorned with black escutcheons, and great number of wax lights in silver sconces and candlesticks; those escutcheons upon the pall were on silk. And in the month of *November*, or thereabouts, in the same year 1691,

the funeral pomp of *De Nen* deceased, and in the parish church of *St. Andrew Undershaft, London*, buried, in the manner and form in the third scedule to the articles aforesaid annexed described, or in a manner and form very like; which said schedule follows in these words, letters and figures to wit, *Madam De Nen, November 6th 1691*, buried at *St. Andrew's Undershaft* from cloth-workers-hall; the corpse was set in state in a kind of alcove in close mourning, both the ceiling and floor being covered with black bays at the upper end of the hall, the inner-side whereof was adorned with double rows of escutcheons, and some of them at the head were placed in the nature of a majesty; about the body were placed on stands and sconces a great number of wax lights; immediately before the corpse was a rail covered with light mourning, and thereon affixed eight plumes of black feathers; the great hall and passage leading to it was ranged with bayes, and a row of escutcheons and lights, in fact, but unduly and against the law of arms, and in contempt of the jurisdiction and authority of the said *Henry* duke of *Norfolk*, and the office and law of arms to order, direct and marshal, durst and presumed, and the persons attending the same funerals did put and place, and the manner of proceeding directed; and that this was and is true, public and notorious, manifest likewise and famous, and of and upon the same was and at present is the publick talk and discourse. *Item*, that within the time in the preceding article mentioned, the said *James Morris* to desist from such misdemeanors, and particularly from the marshalling, ordering and directing of the funeral pomp of any deceased, often, or at least once, on the part of the said *Henry St. George* was admonished; nevertheless he hath refused, and yet doth refuse to desist, at least hath unjustly delayed, and doth at present delay, as by the copy of the articles and schedules aforesaid here in court produced more fully appears: And the said *W. Oldys* and *Henry St. George* the same *James Morris* in the said court of honour of the said lord earl marshal of *England* before the said *Henry* duke of *Norfolk*, then and yet being earl marshal, for the reason aforesaid, to appear and of and upon the premisses to answer have unjustly compelled; and the said *James Morris* by the definitive sentence of the said court of honour of the lord earl marshal of *England* of and upon the premisses to cause to be condemned with all their power endeavour; and altho' the writ of the said lord and lady the king and queen of prohibition to the said *W. Oldys* and *Henry St. George* the 28th day of *May* in the 4th year of the reign of the said lord and lady the now king and queen, at *London* aforesaid in the parish and ward aforesaid, to the contrary thereof was directed and delivered: Nevertheless the said *W. Oldys* and *Henry St. George* the plea aforesaid in the said court of honour of the said *Henry* duke of *Norfolk*, lord earl marshal of *England*, after the prohibition aforesaid to them first to the contrary thereof directed and delivered, to wit, the 30th day of *May* in the year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, have farther prosecuted, and in that plea proceeded, in contempt of the

saïd lord and lady the now king and queen, and to the manifest damage, prejudice, grievance and impoverishment of him the saïd *James Morris*, and against the form of the statute aforesaid; whereby the saïd *James Morris*, who as well, &c. says that he is prejudiced, and hath damage to the value of 100 l. And therefore as well for the lord and lady the king and queen as for himself he produces the suit, &c.

And the saïd *W. Oldys* and *Henry St. George* in their proper persons come and say, that the court of constable and marshal of *England* is an antient court, and for time immemorial was held, and hath been accustomed to be held, before the constable of *England* and the earl marshal of *England* for the time being, or before the constable of *England* for the time being only when the office of marshal of *England* was vacant, or before the earl marshal of *England* for the time being only when the office of constable of *England* was vacant, in which saïd court the constable and earl marshal of *England* for the time being when the office of earl marshal of *England* was vacant, and the earl marshal of *England* only for the time being when the office of constable of *England* was vacant only have had, and for time immemorial have been accustomed to have, the cognisance of all pleas and causes in any wise touching or concerning arms, ensigns, genealogies and funeral pomps arising within this kingdom of *England*, and no other court in such pleas or causes have ever intermeddled, nor jurisdiction thereof in any wise for all the time aforesaid hath had or claimed; and that the saïd suit before the saïd *Henry duke of Norfolk*, earl marshal of *England*, prosecuted, whereof the saïd *James Morris* above now complains, was prosecuted by the saïd antient court of constable and marshal of *England* before the saïd *Henry duke of Norfolk*, being then and yet earl marshal of *England*, the office of constable of *England* being then and yet vacant, of and for matters and causes touching and concerning arms, ensigns and funeral pomps: And the saïd *W. Oldys* and *Henry St. George* farther say, that by a certain act made and provided in a parliament of the lord *Richard* the second, late king of *England*, held at *Westminster* in the county of *Middlesex* on *Monday* next after the feast of *St. Hillary* in the 13th year of his reign, it was enacted by the authority of the same parliament, That if any would complain that any plea be commenced before the constable and marshal that might be tried by the common law of the land, the same plaintiff should have a privy seal of the king without difficulty, directed to the saïd constable and marshal to surcease in that plea until it be discussed by the king's council, if that matter ought of right to pertain to that court, or otherwise to be tried by the common law of the realm of *England*, and also that they should surcease in the mean time, as by the same act more fully appears: And the same *W. Oldys* and *Henry St. George* farther say, that the saïd court of constable and marshal of *England* from time immemorial was a court of so much honour and dignity that the same court never was prohibited or hinder'd, nor for all the saïd time immemorial

Plea.

Prescription.

13 C. 2. c.

hath been accustomed to be prohibited or hinder'd from holding any pleas in the same court of constable and marshal, otherwise or in other manner than according to the form of the statute aforesaid: And this the same *W. Oldys* and *Henry St. George* are ready to verify: Wherefore they don't apprehend that the court here will or ought to take farther cognisance of the plea aforesaid, &c.

[319]

Imparlanee.

And the said *James Morris* prays leave to imparl to the plea aforesaid; and it is granted him, &c. And upon this, day thereof is given to the parties aforesaid before the lord and lady the king and queen at *Westminster* until *Monday* next after three weeks of *St. Michael*, to wit, to the said *James Morris* to imparl to the plea aforesaid, and then to reply, &c. On which day before the lord and lady the king and queen at *Westminster* come as well the said *James Morris* by his attorney aforesaid, as the said *William Oldys* and *Henry St. George* in their proper persons: And the same *James Morris* farther prays leave to imparl to the plea aforesaid; and it is granted him, &c. And upon this a day thereof is farther given to the parties aforesaid before the lord and lady the king and queen at *Westminster* until *Monday* next after the octave of *St. Hillary*, to wit, to the said *James Morris* to imparl to the plea aforesaid, and then to reply, &c. On which day before the lord and lady the king and queen at *Westminster* come as well the said *James Morris* by his attorney aforesaid, as the said *William Oldys* and *Henry St. George* in their proper persons; and the said *James Morris* says, that by any thing by the said *William Oldys* and *Henry St. George* above in pleading alledged, the court of the said lord and lady the king and queen now here ought to take farther cognisance of the said plea against the said *William Oldys* and *Henry St. George*, because by protesting that there is not any such court from time immemorial of constable and marshal, as the said *William Oldys* and *Henry St. George* in their plea aforesaid have above alledged, for replication nevertheless to that plea the same *James* says, that the plea aforesaid, and the matter in the same contained, are not sufficient in law to preclude the court of the lord and lady the king and queen here from taking farther cognisance of the plea aforesaid against the said *William Oldys* and *Henry St. George*, to which the said *James Morris* hath no necessity, nor is by the law of the land obliged, in any manner to answer: And this he is ready to verify: Wherefore he prays judgment, and that the court of the lord and lady the king and queen now here may proceed to take farther cognisance of the said plea against the said *William Oldys* and *Henry St. George*, &c.

Protestando.

Demurrer.

joinder.

And the said *W. Oldys* and *Henry St. George* say, that the plea aforesaid by them the said *W. Oldys* and *Henry St. George* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to preclude the court of the lord and lady the king and queen now here from taking farther cognisance of the plea aforesaid against them the said *W. Oldys* and *Henry St. George*; which said plea, and the matter in the

the same contained, the same *W. Oldys* and *Henry St. George* are ready to verify and prove, as the court, &c. And because the said *James Morris* doth not answer to that plea, nor hitherto in any wise deny it, the same *W. Oldys* and *Henry St. George* as before pray judgment, if the court of the lord and lady the king and queen now here will take farther cognisance of the plea aforesaid, &c. But because the court of the said lord and lady the king and queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord and lady the king and queen at *Westminster* until day next after to hear their judgment of and upon those premisses, because the court of the said lord and lady the king and queen now here thereof not yet, &c.

Page and Hughes.

England, to wit. **B**E it remembered, that on day next after in this same term before the lady the queen at *Westminster* comes *Mary Page*, the wife of *Francis Page*, by *A. B.* her attorney, and gives the court of the lady the queen now here to understand and be informed, that whereas all and all manner of pleas of trespass on the case within this kingdom of *England* arising and happening to the lady the now queen and her royal crown, and to the proper court of the said lady the queen, according to the laws and customs of this kingdom of *England*, do belong and appertain: Nevertheless one *Elizabeth Hughes*, the wife of *Thomas Hughes* an inhabitant of *Ealing*, otherwise *Yealing*, in the county of *Middlesex* in the diocese of *London*, not ignorant of the premisses, but contriving her the said *Mary* wrongfully to aggrieve and oppress, her the said *Mary*, being likewise an inhabitant within the parish aforesaid, to another proof in the court christian, before the reverend and excellent man *Henry Newton*, doctor of laws of the consistory court of *London*, official principal lawfully constituted, against the due form of law of this kingdom of *England*, and against the custom aforesaid, for a certain supposed cause of contempt, scandal and disgrace of the said *Elizabeth Hughes*, hath unjustly drawn in a plea to answer to certain articles by the said *Eliz.* in the same court christian against her the said *Mary* in the premisses exhibited and promoted, craftily and subtilly there articulating and objecting, that the said *Mary* in the months of *March*, *April* and *May* 1702, within the said parish of *Ealing*, otherwise *Yealing*, in the county of *Middlesex* aforesaid, and other parishes and publick places to the same near and adjoining, the same *Elizabeth* wickedly and maliciously defamed, and some defamatory words to the infamy and diminution of the estate, name and good fame of the said *Elizabeth Hughes* sounding and tending, in these *English* words following, or others in effect like them and importing the same sense, to wit, You (*meaning the said Elizabeth*) are a whore, and have got the pox, and it has eat the teeth out of your head, and you (*again meaning the said Eliza-*

Cro. El. 87, 648.
1 *Inst. 430.*
2 *Lev. 49, 63, 66.*
Suggestion for a prohibition for words defamatory.
Lutw. 1037.

Prohibition.

Elizabeth) have given it to your husband, openly and publickly spoke, uttered, pronounced and published; and the said *Elizabeth* her the said *Mary* in the said court christian before the judge spiritual of and upon the premisses to appear hath wrongfully obliged, and the same *Mary* thereupon there to answer, and in the premisses to cause to be condemned with all her power endeavours and daily contrives, in contempt of the said lady the now queen, and against the laws and customs of this kingdom of *England*, and to the manifest damage, prejudice and grievance of her the said *Elizabeth*: And this she is ready to verify: Wherefore the same *Mary*, the aid of the court of the said lady the queen now here most humbly imploring, prays remedy by the writ of the said lady the queen of prohibition to the said judge spiritual of the court christian, or other competent judge in this behalf whatever, in form of law to be directed, to prohibit him from holding the plea aforesaid the premisses aforesaid any wise concerning farther before him; and it is granted her, &c.

Bettenson, bart. and Henschman, esq; and another.

Judgment by default in prohibition.

AND the said *Humphry* and *William* by *J. T.* their attorney come and defend the force and injury when, &c. and nothing in bar or preclusion of the said action of the said *Thomas*, who as well, &c. say; whereby the said *Thomas*, who as well, &c. remains against the said *Humphry* and *William* therein undefended; wherefore the said *Thomas*, who as well, &c. his damages, by reason that they the said *Humphry* and *William* as aforesaid prosecuted in the said court christian after the prohibition aforesaid to them to the contrary directed and delivered, against the said *Humphry* and *William* ought to recover: But because it is unknown what damages the said *Thomas*, who as well, &c. hath sustained on that account, the sheriff is commanded, that by the oath of good and lawful men of the county aforesaid he diligently inquire what damages the said *Thomas*, who as well, &c. hath sustained, as well on that account as for his costs and charges by him about his suit in this behalf expended, and the inquisition which, &c. he certify here from the day of the Holy *Trinity* in three weeks, under the seal, &c. and the seals, &c. On which day here comes the said *Thomas*, who as well, &c. by his attorney aforesaid; and the sheriff hath not returned the writ, therefore as before let another writ thereof be made to him in form aforesaid, returnable here from the day of *St. Michael* in three weeks: On which day here comes the said *Thomas*, who as well, &c. by his attorney aforesaid; and the sheriff, to wit, *G. C. knt.* and *W. B. esq;* hath now sent here a certain inquisition taken before him at the *three Tuns* in *Brook-street* near *Holborn* in the county aforesaid on the 18th day of *October* last past, by the oath of 12, &c. whereby it is found, that the said *Thomas*, who as well, &c. hath sustained damages by reason of the premisses, besides his costs and charges by him

about

Prohibition.

† 320

about his suit in this behalf expended, to 5*l.* and for those costs and charges to 20*s.* Therefore it is considered, that the said *Thomas*, who as well, &c. do recover against the said *Humphry* and *William* his damages aforesaid to 6*l.* by the inquisition aforesaid in form aforesaid found, as also 49*l.* to the same *Thomas* at his request for his costs and charges aforesaid by the court here of increase adjudged; which said damages in the whole amount to 55*l.* And let the said *Humphry* and *William* be taken, &c.

Sign'd 9th No-
vember 7 Geo.

Oldham against *Pepper*,

[321]

P, 33 C. 2.

England, to wit. **BE** it remember'd, that on *Wednesday* next after 15 days of *Easter* in this same term before the lord the king at *Westminster* comes here into court *John Oldham* in his proper person, and gives the court here to understand and be informed, that whereas one *Robert Pepper* doctor of laws, of the consistory court of the bishop of *Norwich* official principal, had caused to be cited him the said *John Oldham* to appear before the said official, or his surrogate or other judge in that behalf competent whatsoever in the cathedral church of *Norwich* in the usual place there on the 7th day of *December* last past, to answer to certain articles, heads or interrogatories, by the office of the said official, at the promotion of *John Houghton*, esq; and *A. N.* gent. church-wardens of the parochial church of *St. George* of *Tombland* in *Norwich* aforesaid, to be objected and administred; and altho' the same *John Oldham*, according to the citation aforesaid, on the day aforesaid so as aforesaid assigned before the said official hath appeared, and being by the said official required to answer to the premisses, desired a copy of the libel or articles of that to which he should answer in the premisses, according to the form of the statute made in the 2d year of the reign of the lord *Henry* the fifth late king of *England* to be delivered to him; yet the said official statute aforesaid not regarding, but contriving him the said *John Oldham* unjustly and unduly to aggrieve, oppress and fatigue, any copy of the libel or articles of the premisses to the said *John Oldham* hath delayed, and yet doth delay to deliver; and nevertheless the said official him the said *John Oldham* for not answering to the articles aforesaid hath pronounced contumacious, and on pretence of that contumacy sentence of excommunication against him the said *John Oldham* hath unjustly decreed, to the great damage and expence of the said *John Oldham*, and in contempt of the lord the now king, and against the form of the statute aforesaid: And this the said *John Oldham* is ready to verify: Wherefore the same *John Oldham* the aid and assistance of the court of the lord the king here most humbly imploring, prays remedy and the writ of the said lord the king of prohibition to the said judge spiritual, or
other

Suggestion for
refusing a copy of
the libel.

2 H. 5. c. 3:

Prohibition
prayed till a co-
py delivered.

other judge in this behalf competent whatsoever, to prohibit him that he may not proceed farther in the plea before him in any wise touching the premisses, until a true copy of the libel or articles in the same court christian against him the said *John Oldham* exhibited be delivered to the same *John*, and that the same judge spiritual, if he hath pronounced any sentence against him the said *John* for his contumacy in not answering to the articles aforesaid, may discharge the same, and him the said *John* from that sentence wholly absolve: And it is granted him.

Suggestion by the husband that his wife by law could not make a will without his assent.

England, to wit. **B**E it remember'd, that on *Monday* in three weeks of the Holy *Trinity* in this same term before the lord the king at *Westminster* comes *Charles Lee*, knt. in his proper person, and gives the court of the said lord the king now here to understand and be informed, that whereas according to the law of the land and the custom of this kingdom of *England* from time immemorial within the same kingdom had and used no married woman can make her will, nor by any will give or dispose to any person or persons whomsoever in any manner any part of her estate without the express consent of her husband at the time of the making or consummation of the same, or the allowance and ratification thereof by the husband after the making of such will, and altho' the exposition and discussing of the laws and customs of this kingdom of *England* to the said lord the now king belong and ought in his temporal courts to be expounded, and ought not in any wise to be tried and determined or discussed in the ecclesiastical court, or by the ecclesiastical laws or censures, nor for time immemorial have been accustomed: Nevertheless *Rachel Corbett*, spinster, and *John Bowes*, bart. contriving him the said *Charles* against the law and custom of this kingdom of *England* unduly to aggrieve, oppress and fatigue, and also the said lord the king and his royal crown to dishonour, and the cognizance of the plea, which to the said lord the now king, and not to the court christian, belongs, to another proof in the court christian to draw, the said *Charles* in the prerogative court of the archbishop of *Canterbury*, before *Richard Lloyd*, knt. surrogate to *Lewellin Jenkins*, knt. keeper, or master or commissary of the prerogative court of *Canterbury*, or other judge in that behalf competent, have drawn in plea, by alledging, that *Sarah viscountess Corbett* of *Linslade* in the county of *Bucks* deceased, made a pretended last will and testament in writing, and her the said *Rachel* constituted executrix thereof, when in truth and in fact the said viscountess at the time of the making of the pretended will aforesaid was a married woman and the wife of him the said *Charles*; and because they the said *Rachel* and *John* have not alledged, nor in any wise made pretence in their allegation aforesaid, that he the said *Charles* gave his consent at the time of the making of the will aforesaid, or was in any manner privy thereto, or at any time after in any manner ratified or confirmed the same, but on the contrary, he the same *Charles*, always be-
fore

The grievance.

Allegation that the wife made her will.

fore the making of the said pretended will, and always from thence hitherto after, disagreed to and dissented from the same, and by the answer of him the said *Charles* to the said allegation of the said *Rachel* and *John* in the said court christian exhibited judicially protested against the said pretended will, and the same wholly disallowed and disapproved, and by his answer pray'd that the said viscountess his wife might be declared to have died intestate, and that letters of administration of all the goods and chattels, rights and credits of the said viscountess might be committed to him the said *Charles* the husband of the said viscountess; and altho' the pretended will of any married woman is of no force or effect in law without the assent of the husband obtained; and also altho' the said viscountess at the time of the making of her pretended will aforesaid was married to the said *Charles* her husband, and the same *Charles* to such pretended will never gave his assent, whereby the same pretended will ought not to be approved in the ecclesiastical court; and also altho' the same *Charles* in the said court christian all and singular the premisses in his discharge against the probate of the will aforesaid hath alledged and pleaded, and offered to prove them by inevitable truth and testimony: Nevertheless the same judge spiritual hath altogether refused to admit that plea, proof and allegation, and proposes to proceed to prove the said pretended will of the said viscountess; and the said *Rachel* and *John*, to cause him the said *Charles* by the definitive sentence of the said court to be condemned, with all their power endeavour and daily contrive, in contempt of the said lord the king, to the great and manifest damage, prejudice and impoverishment of the said *Charles*, and against the law of this kingdom of *England*: Wherefore the said *Charles* the aid and assistance of the court of the said lord the king now here most humbly imploring prays remedy, and the writ of the said lord the king of prohibition to the said judge spiritual, or other judge in this behalf competent whatsoever, to be directed, to prohibit him that he do not farther hold plea before him in any manner touching the premisses: And to him it is granted, &c.

The husband disagreed to it, and prayed administration.

Prohibitor prayed.

Saunders against Hanslope.

H. 34 & 35 C. 2.

England, to wit. **B**E it remember'd, that, &c. comes *John Saunders* of the city of *B. mercer*, within the diocese of *B.* by *T. E.* his attorney, and gives the court here to understand and be informed, that he the said *J. S.* from the time of his birth hitherto was and is a protestant, openly professing the faith and religion of the church of *England*, and behaving himself conformable to the rites and ceremonies in the church of *England* by the laws of this kingdom of *England* established: Nevertheless one *Henry Jones*, doctor of laws, official principal of the consistory court of the reverend father in Christ

Suggestion on a suit that the party had not received the sacrament in his parish church.

That he received the sacrament at the Abby church.

[323]

Christ G, by divine permission bishop of B. also his vicar general in spirituals lawfully constituted, contriving and intending the said J. S. unjustly to aggrieve and oppress, hath cited, and caused to be cited, the said J. S. to appear in the court christian within the diocese of B. aforesaid before him the said H. J. and the same J. S. on that account in the said court christian on the first day of *December* in the 34th year of the reign of the Lord the now king appeared before the said H. J. according to the form and effect of the citation aforesaid, and then and there the said J. S. by the said H. J. was admonished to frequent his parochial church on *Sundays* and festivals in the time of divine service, there to receive the sacrament of the Lord's supper or holy eucharist in his parochial church of *St. T. Bristol* aforesaid, according to the rites of the church of *England*, at the feast of the birth of our Lord then next following and now last past, and to appear on *Saturday* 20th day of J. in the 34th year aforesaid in the court christian aforesaid to certify of the same; whereupon he the said J. S. divine prayers according to the liturgy and practice of the church of *England* on *Sundays* and festivals continually afterwards hitherto, in sundry parochial churches where the same J. S. inhabited, has publickly frequented, and behaved himself reverently, and on the said feast of the birth of our Lord now last past received the sacrament of the Lord's supper, or the sacrament of the eucharist, according to the rites, usage and custom of the church of *England*, in and at the cathedral church in the diocese of B. aforesaid, to wit, in the church of the holy and undivided Trinity B. from the hands of one F. *Hanslope*, clerk, who the same day and place to all there present the sacrament of the Lord's supper, or the sacrament of the eucharist aforesaid, administered and gave; and afterwards, to wit, 20th day of *January* aforesaid and now last past, the said J. S. in the court christian aforesaid appeared, according to the monition aforesaid, where then and there the said F. *Hanslope* as surrogate of the said H. *Jones* sat judge in a lawful manner constituted, and the said J. S. then and there alledged, and for plea offered to the said F. *Hanslope*, that he the said J. S. the days, times and places aforesaid had publickly frequented divine prayers according to the liturgy and practice of the church of *England*, and on the birth of our Lord aforesaid had received the Lord's supper, or the sacrament of the eucharist, in the cathedral church aforesaid, from the hands of him the said F. H. and prayed then and there that the said F. H. the plea aforesaid would allow, and him the said J. S. from the court aforesaid dismiss: Nevertheless he the said F. H. not ignorant of the premisses, but contriving and intending against the due form of the law of this kingdom of *England* him the said J. S. to aggrieve and oppress, the allegation and plea so as aforesaid offered would not receive and allow, but to admit it hath refused, and yet doth refuse; and the same F. H. him the said J. S. by the definitive sentence of the said court christian of and upon the premisses,

premisses, to cause to be condemned with all his might endeavours and contrives, against the laws and customs of this kingdom of *England*, in contempt of the said lord the now king, and to the great damage of him the said *J. S.* And this, &c. Wherefore the same *J. S.* the aid of the court of the said lord the king now here humbly imploring prays remedy, and the writ of the said lord the king of prohibition to the said *G.* by divine permission bishop of *B. H.* *J.* doctor of laws, &c. *F. Hanslope*, clerk, surrogate of the said *H. J.* and other judge in this behalf competent, and every of them, to be directed, to prohibit them and every of them, that the plea aforesaid the premisses any ways touching, before them, or any of them, they may not farther hold, nor may any of them hold, and if any sentence or sentences of excommunication against him the said *J. S.* by reason of the premisses only they have pronounced, or any of them hath pronounced, then him the said *J. S.* from thence they wholly may absolve without delay, and every of them may absolve: And to him it is granted, &c.

Adams and Oakes.

H. 7 W. 3.

England, to wit. **B**E it remember'd, that on *Wednesday* next after the octave of *St. Hillary* in this same term before the lord the king at *Westminster* comes *John Adams* of the parish of *Westromwith* in the county of *Stafford*, yeoman, in his proper person, and gives the court of the said lord the king now here to understand and be informed, that all and singular pleas and affairs of and concerning all prescriptions and customs whatever within this kingdom, and the cognisance of those pleas to the said lord the king and his royal crown especially belong and appertain, and ought and always hitherto have been accustomed to be tried and discussed at the common law in the courts of the said lord the king of record, and not in the ecclesiastical court: And whereas within the parish of *Hansworth* in the county of *Stafford* aforesaid, and the bounds, limits and tithable places of the same parish, there is and for time out of mind hath been a custom and manner of tithing, to wit, that all and singular the proprietors, or their farmers or occupiers of any lands, meadow or pasture within the parish of *Hansworth* aforesaid have paid, and have been used and accustomed to pay yearly to the rector of the rectory of the parochial church of *Hansworth* aforesaid for the time being, or his farmer thereof, for every milch-cow within the parish of *Hansworth* aforesaid depastured, had and kept, one penny, and for every calf number seven from such cows within the parish of *Hansworth* aforesaid had and rear'd, one half penny, in lieu and full satisfaction and discharge of all tithes of herbage of such cows, and of milk, butter, cheese, and of such calves from the cows aforesaid however happening,

Suggestion on a
modus to pay a
penny for a
milch-cow.

[324]

growing, renewing or arising; which said several sums of money to payable and paid, all and singular the rectors of the church aforesaid for the time being, or their farmers thereof, for all the time aforesaid yearly of such occupiers, in full satisfaction and discharge of all and singular the tithes aforesaid happening, renewing and arising, have accepted, received and had: And whereas the same John has, holds and occupies, and for five years now last past hath had, held and occupied certain parcels of land and meadow, called the *Little Park Meadows* within the parish of *Hansworth* aforesaid, and for that time the said John hath kept and depastured in and upon the same parcels of land and meadow within that parish two milch-cows, from which said two cows he hath had and reared yearly within the parish aforesaid two calves: Nevertheless one *Thomas Oakes*, being rector of the rectory and parish church of *Hansworth* aforesaid, not ignorant of the premises, him the said *J. Adams* against the due form of the law of this kingdom of *England*, and against the custom aforesaid, to aggrieve and oppress, and the cognisance of the plea, which to the court of the said lord the king now here belongs, to another proof in the court christian to draw, him the said John in the court christian before the venerable and excellent man *R. Raines*, knt. doctor of laws, official principal of the consistory court of the bishop of *Litchfield*, &c. or his surrogate, hath drawn in plea, craftily and subtilly libelling against the said John in the same court christian, among other things, that by an ancient and laudable custom within the parish of *Hansworth* aforesaid, and the bounds, &c. used, approved and obtained, every foreigner living out of the parish of *Hansworth* aforesaid having land, &c. lying and being within the parish of *Hansworth* aforesaid, and depasturing the said land, &c. with beast or sheep to the rector of the rectory of the parochial church of *Hansworth* aforesaid for the time being, or his farmer or collector of the tithes, according to the true annual value or rent of the said land, &c. lying and being within the parish of *Hansworth* aforesaid, and by him depastured, to wit, the sum of 2s. of lawful money of *England* for every 20s. that the said land was yearly worth, for and in consideration of the tithes of the herbage, &c. of the said land, &c. and of the beast and sheep therein, and on the same depastured, yearly and every year hath been accustomed, ought and was bound to pay, and that in the months of *March*, &c. in the year 1692 and 1693, and in the months of *March*, &c. in the year 1694, or of either of them, &c. the said John Adams was a foreigner, and lived out of the parish of *Hansworth* aforesaid, and within the parish of *Weston-with* aforesaid, and held and occupied land, &c. lying and being within the parish of *Hansworth* aforesaid, and the bounds, &c. of the yearly value or rent of 3*l.* which the beast and sheep for all that time, or a great part of the same, he depastured and eat up, &c. and him the said John in the court christian before the said judge spiritual on the account aforesaid to appear, and to the

The said *Thomas Oakes* to answer of and upon the premises, hath wrongfully compelled and obliged, when in truth he the said *John* no beast or sheep within the parish of *Hansworth* aforesaid of, out or upon the said parcels of land and meadow, called the *Little Park Meadows* aforesaid, or in any other place, in the months in the years aforesaid ever depastured, had or kept, except the said two milch-cows before-mentioned, and two calves from the said two cows yearly during the time aforesaid had and brought up; and altho' the said *John Adams* always at *Hansworth* aforesaid was ready and offered to pay to the said *T. Oakes* yearly and in every of the years aforesaid two pence for the said two cows yearly within the parish aforesaid depastured, and one penny for the two calves aforesaid yearly had and reared, according to the custom and manner of tithing aforesaid; and altho' the same *John* all and singular the premises in this suggestion contained in his discharge in the court christian aforesaid hath pleaded, and by inevitable testimony hath offered to prove them: Nevertheless the same judge spiritual the plea, allegation and proof aforesaid, to admit or receive hath wholly refused, and to cause him the said *John Adams* to pay the money aforesaid in the libel aforesaid specified with all his might endeavours and daily contrives, In contempt of the said lord the now king, and to the manifest damage, prejudice and grievance of him the said *John*, and against the due form of the law of this kingdom of *England*, and the prescription and custom aforesaid: And this he is ready to verify: Wherefore the said *John* the aid and assistance of the court of the said lord the king now here most humbly imploring prays remedy, and the writ of the said lord the king of prohibition to the said judge spiritual, or other judge in this behalf competent whatever, to be directed, to prohibit him that he may not farther hold plea before him, the premises aforesaid in any wise touching or concerning, nor attempt, nor presume to attempt any thing farther therein; and if he hath pronounced any sentence of excommunication against him the said *John* by reason of the premises, then he may without delay revoke it, or cause it to be revoked, and intirely absolve him the said *John* at his peril: And it is granted him, &c.

Afterwards, to wit, on *Wednesday* next after the octave of the purification of the blessed *Mary* comes here into court the said *Thomas Oakes* by *John Lilly* his attorney, and prays the writ of the lord the king of consultation of and upon the premises to the venerable and excellent man *Richard Raines*, knt. doctor of laws, official principal of the consistory court of the bishop of *Litchfield*, or his surrogate, or other judge in this behalf competent, to be directed, because the said *John Adams* within six months next after the granting of the prohibition aforesaid his suggestion aforesaid with sufficient testimony, according to the form of the statute thereof made and provided, hath not proved; whereupon, because it manifestly appears to the court of the said lord the king now here, that the said *John Adams* within six

Consultation
prayed for not
proving the sug-
gestion in six
months accord-
ing to a & 3, 6.
c. 13.

[325]

Judgment for
double costs.

months after the said *Wednesday* next after three weeks of the *Holy Trinity* last past his suggestion by sufficient witnesses, according to the statute aforesaid, hath not proved, the said spiritual judge is commanded by writ of the said lord the king of consultation, that in the cause aforesaid between the parties aforesaid, with all the speed he can, according to the law ecclesiastical, he may proceed, the said writ of the said lord the king of prohibition to him in form aforesaid before to the contrary directed in any wise notwithstanding; and farther, according to the form of the statute aforesaid, the court of the said lord the king now here adjudge to the said *Thomas Oakes* for his costs and charges which he hath sustained by reason of the prosecution of the said writ of the lord the king of prohibition, besides his damages, 5*l.* and for his damages 10*l.* which said costs, charges and damages being doubled according to the form of the said statute, amount in the whole to 6*l.* 2*s.* and the said *Thomas Oakes* may have thereof execution, &c.

*Foster and another against Hall.**Hill. 7 W. 3. Roll 128.*Declaration on a
modus to pay
1*s.* a year for
the tithe of a
farm.

Stafford, to wit. **B**E it remember'd, that on *Friday* next after 15 days of *St. Martin* in *Michaelmas* term last past before the lord the king at *Westminster* came *William Foster* the younger and *William Hawkisford*, who as well for the lord the king as for themselves prosecute by *Nathaniel Hickman* their attorney, and produced here in the court then there their certain bill against *Thomas Hall*, clerk, vicar of the vicarage of the parochial church of *Busbury* in the county aforesaid, in the custody of the marshal, &c. in a plea, why he prosecuted a plea against them the said *W. Foster* and *W. Hawkisford* in the court christian after the royal prohibition to him first to the contrary thereof directed and delivered; and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Stafford*, to wit, *William Foster* the younger and *William Hawkisford*, who as well for the lord the king as for themselves prosecute, complain of *Thomas Hall*, clerk, vicar of the vicarage of the parochial church of *Busbury* in the county aforesaid, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself in a plea, why he prosecuted a plea against them the said *W. Foster* and *W. Hawkisford* in the court christian, against the royal prohibition to them first to the contrary thereof directed and delivered, for this, to wit, that whereas all and singular pleas of and concerning prescriptions and customs within this kingdom of *England*, and the cognisance of the same pleas, to the said lord the king and his royal crown especially belong and appertain, and at the common law in the courts of the lord the king of record, and not in the

the ecclesiastical court, ought to be tried and discussed, and always hitherto have been accustomed: And whereas all and singular the occupiers, tenants and farmers of one messuage, one garden, 100 acres of land, 40 acres of meadow, and 200 acres of pasture with the appurtenances, commonly called *Wobaston Farm* in the parish of *Busbury* in the said county of *Stafford* for the time being, have from time immemorial been accustomed to pay to the vicar of the vicarage of the parochial church aforesaid for the time being, or his farmer of that vicarage, yearly the annual sum of 15 s. of lawful money of *England*, in full contentation, payment and satisfaction of all and singular the tithes whatsoever of wool, lambs, pigs, geese, milk, calves, apples, pears and plumbs, of and from the said messuage and tenements with the appurtenances, called *Wobaston Farm*, howsoever happening, renewing or arising, as also of all *Easter* offerings for the occupiers of the messuage aforesaid, and for the same messuage and garden, and also of all other small tithes whatsoever to the vicar of the vicarage aforesaid for the time being of and from the tenements aforesaid yearly payable: And whereas also the said *W. Foster*, on the 26th day of *March* in the fifth year of the reign of the lord the now king and of the lady *Mary* the late queen of *England*, was and yet is occupier and farmer of the said messuage, garden, 88 acres of land, 40 acres of meadow, and 200 acres of pasture with the appurtenances, parcel of the said messuage and tenements called *Wobaston Farm*: And whereas also the said *W. Hawkisford* on the same 26th day of *March* in the fifth year abovesaid was and yet is occupier and farmer of 12 acres of land, the other parcel of the said messuage and tenements called *Wobaston Farm*: Nevertheless the said *Thomas Hall*, clerk, vicar of the vicarage of the parochial church aforesaid, not ignorant of the premises, but contriving and intending them the said *William Foster* and *William Hawkisford*, against the due form of the law of this kingdom of *England*, and against the prescription and manner of tithing aforesaid, unduly to aggrieve and greatly to oppress and fatigue, and also the said now king and his royal crown to disinheret, and the cognisance of the plea, which to him the said now king and his royal crown particularly belongs and appertains, to another proof in the court christian to draw, them the said *William Foster* and *William Hawkisford* in the court christian before the venerable and excellent man *Sir Richard Raines*, knt. doctor of laws, official principal of the consistory court of the bishop of *Litchfield* lawfully constituted, hath drawn in plea, craftily and subtilly libelling against him the said *William Foster*, that he the said *William Foster* in the months of *March*, &c. in the years of the Lord 1693 and 1694, or of them, &c. had, &c. 10 bushels or measures of apples, and 10 bushels or measures of pears, within the parish of *Busbury* aforesaid, and the bounds, &c. growing, and 60 ewe sheep, and 70 barren sheep and wethers, one sow, and likewise two geese, in the same parish of *Busbury* aforesaid in the months

[326]

Th: libel.

and years aforesaid, or of them, &c. and had from the same ewe sheep, barren sheep and wethers 130 pound of wool there yearly and every of the years aforesaid shorn, and of and from the same 60 ewe sheep 60 lambs there yearly and in every of the said years bred, and of and from the same sow 10 pigs there yearly and in every of the years aforesaid pigged, and of and from the same geese 20 gollings there yearly and in every of the said years hatched, and that within the parish of *Busbury* aforesaid, and the bounds, &c. there was a certain laudable and antient prescribed custom, that every master of a family any mansion-house and garden within the same parish having, &c. and a family there keeping and maintaining, and divine service in the parochial church of *Busbury* aforesaid hearing, and the sacraments and sacramentals there receiving, or so to hear and receive being bound, to the vicar of the vicarage of the parochial church of *Busbury* aforesaid, or to his farmer for the time being, in the name of certain rights or ecclesiastical emoluments within the same parish, commonly called *Easter-Offerings* or house-duties, hath yearly paid, or ought to pay, 3 *d.* of lawful money of *England* for himself, 1 *d.* for his house, commonly called a *smoak-penny*, 1 *d.* for his garden, commonly called a *garden-penny*, 1 *d.* for every milch-cow, 1 *d.* and $\frac{1}{2}$ *d.* for every calf there brought forth, for and in lieu of the tithes of every such cow and calf yearly at the feast of *Easter*; and that the said *William Foster* in the months and years aforesaid was a master of a family within the parish of *Busbury* aforesaid, and a family there yearly kept and maintained, and had a mansion-house, garden, and six milch-cows within the same parish yearly brought up and with young; and that he the said *William Foster* for all the time aforesaid divine service in the parochial church of *Busbury* aforesaid did hear, and the sacraments and sacramentals did receive, or so to hear, &c. that plea in the said court christian after the royal prohibition to him to the contrary thereof directed and delivered, to wit, on the 22d day of *November* in the 7th year abovesaid at *Litchfield Cisse* in the county aforesaid, hath farther prosecuted, the said writ of the said lord the king of prohibition to him to the contrary thereof directed and delivered in any wise notwithstanding, in contempt of the said lord the now king, and to the great damage of them the said *William Foster* and *William Hawkisford*, and against the prohibition aforesaid; whereby they the said *William Foster* and *William Hawkisford*, who as well, &c. say that they are prejudiced, and have damage to the value of 100*l.* And therefore as well for the said lord the king as for themselves they produce the suit, &c.

Impairance.

And now on this day, to wit, *Thursday* next after the octave of *St. Hilary* in this same term, until which day the said *Thomas* had leave to imparl to the bill aforesaid, and then to answer &c. before the lord the king at *Westminster*, come as well the said *William Foster* and *William Hawkisford* by their attorney aforesaid, as the said *Thomas Hall* by *John Lilly* his attorney, and the

the said *Thomas Hall* defends the force and injury when, &c. and all contempt, &c. and whatsoever, &c. and says, that he hath not prosecuted the plea in the said court christian against the royal prohibition to him to the contrary thereof before directed and delivered, as the said *William Foster* and *William Hawkisford*, who as well, &c. above by their declaration aforesaid suppose: And of this he puts himself on the country: And the said *W. Foster* and *W. Hawkisford* thereof likewise, &c. But to have the writ of the said lord the king of consultation in this behalf, the said *Thomas* says, that he the said *Thomas* for the time of the subtraction of the tithes in the declaration aforesaid above specified was and yet is vicar of the parochial church of *Busbury* aforesaid in the county aforesaid; and the same *Thomas* farther says, that all and singular the vicars of that church for the time being have had and received, and for time immemorial have been accustomed to have and receive of all the occupiers, tenants and farmers of the said messuage, and tenements, called *Wobaston Farm* in the parish of *Busbury* aforesaid in the declaration aforesaid above-mentioned, all the tithes of whatever wool, lambs, pigs, geese, milk, calves, flax, apples, pears and plumbs, and also all *Easter-Offerings* for the occupiers of the messuage aforesaid, and for the same messuage and garden aforesaid, and also all other small tithes whatsoever happening, renewing or arising in their proper kind yearly, or every occupier, tenant and farmer of the said messuage and tenements called *Wobaston Farm* aforesaid, with the same vicar or his farmer thereof for the time being for the same tithes yearly have compounded; and because the said *William Foster* and *William Hawkisford*, being inhabitants within the parish of *Busbury* aforesaid in the county aforesaid, the said tithes in the months and years in the declaration aforesaid mentioned within the parish of *Busbury* aforesaid happening, renewing, growing and arising to the said *Thomas Hall*, vicar of the church aforesaid, in the right of that church in the same years belonging, had from the said *Thomas Hall* subtracted, the said *Thomas Hall* them the said *William Foster* and *William Hawkisford* in the court christian, before the said judge spiritual, of and for the subtraction of those tithes in the said months and years in the declaration aforesaid specified, before the prohibition of the said lord the king to him to the contrary directed and delivered, did draw in plea, as he lawfully might; without this, that all and singular the occupiers, tenants and farmers of the said messuage, garden, 100 acres of land, 40 acres of meadow, and 200 acres of pasture with the appurtenances, called *Wobaston Farm* in the parish of *Busbury* aforesaid in the county aforesaid, from time immemorial have paid, and been accustomed to pay, to the vicar of the parochial church of *Busbury* aforesaid for the time being, or his farmer of that vicarage yearly, the annual sum of 15 s. of lawful money of *England*, in full contentation, satisfaction and payment of all and singular the tithes whatever of wool, lambs, pigs, geese, milk and calves, flax, pears, apples and plumbs,

That the vicar
always received
the tithes in
kind.

[327]

And because the
plaintiff had
subtracted the
tithes, he sued
them in the
usual court.

Trave of the
modus.

plumbs, of and from the said messuage and tenements aforesaid with the appurtenances, called *Wobaston Farm* aforesaid, howsoever happening, renewing or arising, as also of all and singular *Easter-Offerings* for the occupier of the messuage aforesaid, and the said messuage and garden aforesaid, and also of all other small tithes whatsoever to the vicar of the vicarage aforesaid for the time being of and from the tenements aforesaid yearly payable, as the said *William Foster* and *William Hawkisford* by their declaration aforesaid above suppose: And this he is ready to verify: Wherefore he prays judgment, and the writ of the said lord the king of consultation to him in this behalf to be granted, &c.

Issue on the traverse.

And the said *William Foster* and *William Hawkisford*, who as well, &c. say, that by any thing by the said *Thomas Hall* above in pleading alledged, the writ of the lord the king of consultation to the said *Thomas Hall* ought not to be granted, because, as before they say, that all and singular the occupiers, tenants and farmers of the said messuage, garden, 100 acres of land, 40 acres of meadow, and 200 acres of pasture with the appurtenances, called *Wobaston Farm* in the parish of *Busbury* aforesaid in the county aforesaid, from time immemorial have paid, and been accustomed to pay, to the vicar of the parochial church of *Busbury* aforesaid for the time being, or his farmer of that vicarage yearly, the annual sum of 15 s. of lawful money of *England*, in full contentation, satisfaction and payment of all and singular tithes whatsoever of wool, lambs, pigs, geese, milk, calves, flax, apples, pears and plumbs, of and from the said messuage and tenements aforesaid with the appurtenances, called *Wobaston Farm* aforesaid, howsoever happening, renewing or arising, and also of all *Easter-Offerings* for the occupiers of the messuage aforesaid, and for the said messuage and garden aforesaid, and also of all other small tithes whatsoever to the vicar of the vicarage aforesaid for the time being, of and from the tenements aforesaid yearly payable, in manner and form as the said *William Foster* and *William Hawkisford* by their declaration aforesaid above suppose: And this they pray may be inquired of by the country: And the said *Thomas* likewise, &c. Therefore as well to try the issue aforesaid, as the said other issue between the parties aforesaid above joined, let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after the octave of the purification of the blessed *Mary*; and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

The Jurata.

Stafford, to wit. THE jury between *William Foster* the younger and *William Hawkisford*, who as well for the lord the king as for themselves prosecute by their attorney, plaintiffs, and *Thomas Hall*, clerk, vicar of the vicarage of the parochial church of *Busbury* aforesaid in the county aforesaid, defendant, in a plea, why he prosecuted a plea against them the said *William Foster* and *William Hawkisford* in the court christian

christian after the royal prohibition to him first to the contrary thereof directed and delivered, is put in respite until *Wednesday* next after 15 days of *Easter*, unless the justices of the said lord the king, assigned to take assises in the county aforesaid, shall first come on *Tuesday* the 24th day of *March* at *Stafford* in the county aforesaid, by the form of the statute, for want of jurors, &c. and let the sheriff have the bodies, &c. The same day is given to the parties aforesaid there, &c. And be it known, that the writ of the lord the king thereof on the 12th day of *February* in this same term before the lord the king at *Westminster* is delivered of record to the under-sheriff of the county aforesaid, in form of law to be executed at his peril, &c.

Afterwards the day and place within contained before *Samuel Eyre*, knt. one of the justices of the said lord the king, assigned to hold pleas before the king himself, and *Thomas Bretton*, esq; to the said *Samuel Eyre* and *Thomas Rokeby*, knt. another justice of the said lord the king, assigned to hold pleas before the king himself, justices of the said lord the king, assigned to take assises in the county of *Stafford*, by the form of the statute, &c. this time associated, the presence of the said *Thomas Rokeby* being not expected, by virtue of the writ of the said lord the king of *Si non omnes*, &c. come as well the within named *William Foster* and *William Hawkisford*, who as well for the lord the king as for themselves prosecute, as the within written *Thomas Hall* by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called, some of them, to wit, *Richard Wilkes*, *Thomas Fieldhouse*, *T. P.* and *J. P.* come, and on that jury are sworn; and because the rest of the jurors of that jury have not appeared, therefore others from the by-standers by the sheriff of the county aforesaid hereto elected, at the request of the said *William Foster* and *William Hawkisford*, and by the command of the justices aforesaid, are added anew, whose names are put to the panel within written, according to the form of the statute in such case made and provided, which said jurors so added anew, to wit, *J. Palmer*, *J. C. T. P. T. C. T. H. L. D. J. K.* and *T. C.* being called likewise come, who to say the truth of the within contained, together with the other jurors aforesaid first impanelled and sworn, being elected, tried and sworn, say upon their oath, that all and singular the occupiers, tenants and farmers of the within written messuage, garden, 100 acres of land, 40 acres of meadow, and 200 acres of pasture with the appurtenances, called *Wobaston Farm* in the parish of *Busbury* within written in the county aforesaid, for time immemorial have not paid, or been accustomed to pay, to the vicar of the vicarage of the parochial church of *Busbury* aforesaid for the time being, or his farmer of that vicarage yearly, the annual sum of 15 s. of lawful money of *England*, in full contentation, satisfaction and payment of all and singular tithes whatever of wool, lambs, pigs, geese, milk, calves, flax, apples, pears and plumbs, of and from the said messuage and tenements aforesaid with the

The Postra.

[328]

Tales.

35 H. 8. c. 6.
3 G. 2. c. 25.
7 & 8 W. 3. c.
32. § 3.

Vendia.

appurtenances, called *Wobaston Farm* aforesaid, howsoever happening, renewing or arising, and likewise of all *Easter-Offerings* for the occupiers of the messuage aforesaid and garden aforesaid, and also of all small tithes whatever to the vicar of the vicarage aforesaid for the time being, of and from the tenements aforesaid yearly payable, as the said *Thomas* within for himself in pleading hath alledged: Therefore, &c.

Judgment for the defendant.

Collet, knt. against Lloyd.

Declaration on a prohibition to the court of honour concerning the assuming a coat of arms.
Farell. 125.

Middlesex, to wit. **BE** it remember'd, that otherwise, to wit, in *Trinity* term last past before the lady the queen at *Westminster* came *James Collet* of *London*, knt. who as well for the lady the queen as for himself prosecutes by *S. Mason* his attorney, and produced here in the Court of the said lady the queen then there his certain bill against *N. Lloyd*, doctor of laws, in the custody of the marshal, &c. in a plea, why he prosecuted before *Henry* earl of *Bindon*, of the lord marshal of *England*, by the royal approbation, deputy or vicegerent, after the royal prohibition to him first to the contrary thereof directed and delivered; and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Middlesex, to wit, James Collet* of *London*, knt. who as well for the lady the queen as for himself prosecutes, complains of *N. Lloyd*, doctor of laws, being in the custody of the marshal of the *Marshalsea* of the lady the queen before the queen herself in a plea, why he prosecuted before *Henry* earl of *Bindon*, of the lord marshal of *England*, by royal approbation, deputy or vicegerent, after the royal prohibition to him first to the contrary thereof directed and delivered, for this, to wit, that whereas by the great charter of the liberties of *England* made and provided in the 9th year of the reign of the lord *Henry* the third late king of *England*, predecessor of the lady the now queen, to wit, in a parliament held at *Westminster* in the county of *Middlesex*, it was and is ordained and established, that no freeman should be taken or imprisoned, or disseised of his freehold or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed, nor would the king pass upon him nor condemn him but by lawful judgment of his peers, or by law of the land, as in the same statute more fully is contained: And whereas also the said *James Collet* is a freeman of *England* in the kingdom of *Britain*, and the free customs of *England* ought to enjoy, and against the same ought not in any wise to be disquieted or molested: And whereas in and by a certain other statute made in a parliament in the 8th year of the reign of the lord *Richard* the second late king of *England*, &c. it was enacted, that all pleas and suits touching the common law should not then after be drawn or held by any means before the constable and marshal of *England*: And whereas

5 F. 3. c. 29.

8 R. 2. c. 5.

whereas also in and by another statute in a parliament held in the 13th year of the reign of the same late king, and by divers other laws and statutes of *England*, it is provided, that to the constable and marshal it pertaineth to have cognisance of contracts touching deeds of arms and war out of the realm; and also of things that touch war within the realm, which cannot be determined nor discussed by the common law: And whereas the court having cognisance of contracts touching deeds of arms and war, ought only to be held before the constable and marshal of *England*, and not before the marshal only: And whereas also the court aforesaid by the law of the land ought to be held before the constable and marshal of *England*, and not before the deputy or vicegerent of such deputy of them, or either of them; and whereas also no freeman of *England* by the laws of *England* ought to be attached by his body, or detained in custody until he shall give surety to answer or obey any order or decree in the said court of honour, and the cognisance of all pleas and plaints of and concerning the painting and use of any coats of arms upon chariots, or otherwise, to the prejudice or damage of any subject of *England*, or otherwise, to the common law, and not to any court of honour rightly and justly belongs: Nevertheless one *Nathaniel Lloyd*, doctor of laws, advocate royal in the court of honour, contriving and intending the said *James* against the laws of the land unjustly to oppress and aggrieve, caused him the said *James* to be cited, to wit, at *Westminster* in the county of *Middlesex* aforesaid, that he should appear before *Henry* earl of *Bindon*, of the lord marshal of *England*, &c. by royal approbation, deputy or vicegerent, or before his deputy or surrogate, &c. to answer to certain articles or heads within mentioned concerning his contempt of the jurisdiction or authority of the court of honour aforesaid, and the law of arms, and especially in bearing, usurping, shewing and making arms and coats of arms, as the arms and family coats of arms of him the said *James*, and farther to do and receive what shall be just in that behalf, and hath also thereupon procured a certain decree to attach and detain him the said *James* in custody until he should put in surety in 50*l*, and in case he should not put in such surety on or before, &c. On which day of the appearance of the said *James* the said *Nathaniel* exhibited or caused to be exhibited, in the said court of honour, certain articles against the said *James* in these words following, to wit, In the name of God, *Amen*: We *Henry* earl of *Bindon*, of the lord marshal of *England*, &c. by royal approbation, deputy or vicegerent, to you sir *James Collet* of *London*, knt. the within written articles concerning the contempt as well of our jurisdiction and authority, as of the duty and law of arms, and especially in wearing, usurping, causing to be used and publickly shewing arms, coats of arms and a crest, as your proper family arms, coats of arms and crest, which to you in no manner did belong, nor do belong, and which by the law of arms you could not nor can bear, at the promotion of the venerable man *Nathaniel Lloyd*,

13 R. 2. c. 2.

[329]

Lloyd, doctor of laws, in our court of honour advocate royal, we object and articulate as follows, to wit,

Imprimis, We object to you and articulate, that of right, and by the law of arms, no subject of this kingdom of *England* of what estate, degree or condition soever he shall be, ought to assume to himself, or bear arms, or coats of arms, or a crest, unless he has them, or ought to have them, by the right of his ancestors, or by the gift of some person having sufficient power for that purpose; and we object jointly and severally, and of every one,

Item, We object and articulate, that you the said sir *James Collet* never had, nor have any arms, coats of arms, or a crest, to you and your family lawfully belonging, at least the arms, coats of arms and crest within described, to you and your ancestors did never lawfully belong, nor do belong; and we object as above.

Item, We object and articulate, that notwithstanding the premisses, but they being true, you the said sir *James Collet* well knowing the premisses, in the months of *December*, *January*, *February* and *March*, in the year of the Lord 1706, and also in the months of *March*, *April* and *May*, in the year of the Lord 1707 now current, and of them months every more than one or some the arms, coats of arms and crest, of the form in the shield of arms hereto annexed within described, to wit, sable on a cheveron between three hinds passant argent Annuleti of the field, the crest a hind argent passant, as your proper family arms, coats of arms and crest, in fact on your chariot on both sides caused to be painted, and them for the arms, coats of arms and crest to you and your family proper, and to you and your family lawfully belonging, on both sides to be born and shewn, commanded, at least permitted: In all things nevertheless unjustly and without any right and authority, and in contempt of our jurisdiction and authority, and the duty and law of arms, and to the intolerable injury of the nobility and gentry of this famous kingdom of *England*; we object nevertheless of every other time, &c. and we object as above. *Item*, we object and articulate, that you the said sir *James Collet* was and are of the city of *London*, and to the jurisdiction of our court of honour subject and liable; and we object as above. *Item*, we object and articulate, that of and upon all and singular the premisses it was and is on the behalf of the said venerable man *Nathaniel Lloyd*, doctor of laws, in our said court of honour advocate royal, to us and our said court of honour said, articulated and querelated; and we object and articulate as above.

[330]

Item, We object and articulate, that all and singular the premisses were and are true, publick, notorious, manifest also and famous,

famous, and of and concerning the same was and at present is the publick talk and discourse; whereof proof being made of right in this behalf requisite, the party proponent prays right and justice to him and his party to be done and administered with effect; and you the said sir *James Collet* in the months and years articulated, or of the same months one or some, the coat of arms and crest, in the shield of arms in these articles painted and described, as your proper family coat of arms and crest in fact on your chariot on both sides to be painted, and by you caused and procured to be usurped, and them for the arms and crest to you and your family proper, and to you and your family belonging on both sides to be born and shewn, to have commanded, at least to have permitted, in contempt of our right, jurisdiction and authority, and the office and law of arms, and to the intolerable injury of the nobility and gentry of this famous kingdom, to be pronounced, decreed and declared; and you sir *J. Collet*, for such your exceeding rashness in the premisses, according to the course of justice and law of arms to be corrected, and that from the like and from bearing and usurping the said coat of arms and crest for the future you may abstain, to be admonished, constrained and compelled, as also in the expences of this suit and plaint made and to be made to the said venerable man *Nathaniel Lloyd*, doctor of laws, in our court of honour advocate royal, to be condemned, and to the effectual payment of the same to be forced and compelled, ought to be pronounced and declared, and further to be done, appointed and decreed, what shall be right and consonant to reason and the law of arms, the several things moreover propounding jointly and severally, and not obliging himself to prove all and singular the premisses, nor to the burden of superfluous proof, but that so far as he shall prove in the premisses he may obtain in the demanded, the benefit of the law of arms in all things always saved, your office sir the judge most humbly imploring; and altho' the said *James* all and singular the premisses above mentioned before the said lord the earl of *Bindon* in his defence against any farther proceedings on the articles aforesaid hath pleaded and alledged: Nevertheless the said *Nathaniel* him the said *James*, by colour of the premisses to aggrieve and oppress, a certain definitive sentence of the said lord earl of *Bindon*, or his deputy, on the premisses endeavours to procure, in contempt of the said lady the now queen, and to the manifest disinherittance of her royal crown, and against the form and effect of the law and statutes aforesaid, and to the damage and prejudice of the said *James*: * And altho' the said *James Collet* afterwards, to wit, on the day of *June* in the year of the reign of the said lady the now queen, at *Westminster* aforesaid, delivered to the said *Nathaniel Lloyd* the writ of the said lady the queen of prohibition to the contrary thereof: Nevertheless the said *Nathaniel* hath not ceased from farther prosecuting that plea, but that plea before the said *Henry* earl of *Bindon*, or his deputy, after the royal prohibition to him to the

* Go so far in the writ of consultation.

con-

Imparlanee.

Plea for a consultation.

[331]

contrary in form aforesaid directed and delivered, to wit, the day and year last aforesaid at *Westminster* aforesaid, hath farther prosecuted the said writ of the said lady the queen of prohibition to him to the contrary directed and delivered notwithstanding, in contempt of the said lady the now queen, and to the damage of the said *James*, who as well, &c. 100*l*. And therefore as well for the said lady the queen as for himself he produces the suit, &c. And now on this day, to wit, *Wednesday* next after 15 days of *Easter* in this same term, until which day the said *Nathaniel* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lady the queen at *Westminster* comes as well the said *James* by his attorney aforesaid, as the said *Nathaniel Lloyd* by *John Shaw* his attorney; and the same *Nathaniel* defends the force and injury when, &c. and all contempt and whatsoever, &c. and says, that he hath not prosecuted the plea aforesaid before the said *Henry* earl of *Bindon*, of the lord marshal of *England*, &c. by royal approbation, deputy or vicegerent, after the royal prohibition to him to the contrary thereof directed and delivered, in manner and form as the said *James Collet*, knt. above in declaring hath alledged: And of this he puts himself on the country: And the same *James Collet*, knt. who as well, &c. likewise: And as to the procuring a certain decree to attach and detain him the said *James* in custody until he put in surety in manner and form as by the declaration aforesaid above is supposed, the same *Nathaniel Lloyd* says, that he hath not procured any decree to attach and detain him the said *James* in custody until he put in surety in manner and form as by the declaration aforesaid above is supposed: And of this he puts himself on the country: And the said *James*, who as well, &c. likewise: But to have the writ of the lady the queen of consultation in this behalf, the same *Nathaniel Lloyd* says, that the court of honour is an antient court, and from time immemorial hath been held, and hath been accustomed to be held, before the constable of *England*, and the marshal of *England* for the time being, or either of them, or before their deputies or vicegerents, or surrogates, or the deputy or vicegerent, or surrogate of either of them, in which said court of honour the said constable of *England* and the marshal of *England* for the time being, or either of them, their deputies or vicegerents, or surrogates, or the deputy or vicegerent, or surrogate, of either of them, the court aforesaid before them or him being held, have and hath had, and for all the time aforesaid have and hath been accustomed to have, and of right have and hath ought to have the cognisance of pleas and causes in any wise touching or concerning arms and coats of arms arising within the kingdom of *England*, to wit, at *Westminster* aforesaid, and no other court whatsoever within the kingdom of *England* in such pleas or causes hath ever intermeddled, nor the jurisdiction thereof in any wise for all the said time hath had, or hath claimed, or ought to have: And the same *Nathaniel Lloyd* farther says, that the office of advocate royal in the court

of honour aforesaid is an antient office; and that in the same court there is and from time immemorial hath been such custom there used and approved, that if any person hath born, usurped, or caused to be used; any arms or coat of arms as his proper family arms, which to such person did in no manner belong; and which of right and by the law of arms such person could not nor ought to bear, the advocate royal in the same court for the time being, or any other person who will promote a suit in the same court *ex officio* for the cause aforesaid against such person the arms or coat of arms so bearing, usurping and causing to be used, to procure such person the arms or coat of arms so as aforesaid bearing, usurping or causing to be used, in the same court of honour to be cited to appear there before the constable of *England* and the marshal of *England* for the time being; or either of them, or before their deputies or vicegerents, or surrogates, or the deputy or vicegerent, or surrogate, or either of them to answer to the articles, heads or interrogatories, at the promotion of him the said advocate royal, or other person, such suit *ex officio* promoting there to be exhibited against such person the arms and coat of arms so as aforesaid bearing, usurping or causing to be used, touching and concerning such persons contempt in bearing, usurping and causing to be used arms, or a coat of arms, as his proper family arms, which by the law of arms he could not or ought not to bear; and also afterwards such articles, heads or interrogatories, against such person the arms or coat of arms so as aforesaid bearing, usurping or causing to be used, in the same court to cause to be exhibited, and the suit against the same person for the cause aforesaid *ex officio* to promote, for all the time aforesaid hath been accustomed and might; and that in such case the same constable of *England* and the marshal of *England* for the time being, or either of them, or their deputies or vicegerents, or surrogates, or the deputy or vicegerent, or surrogate, or either of them, at the promotion of him the said advocate royal in the same court or other person the suit as aforesaid there *ex officio* promoting, for all the time aforesaid have and hath been accustomed to send in their or his names or name a certain process in writing of a certain date expressed, to all justices of the peace, sheriffs, bailiffs, constables and officers, and also to all his majesty's faithful subjects whatsoever in and throughout the whole kingdom of *England*, but especially to the mandatory or marshal of that court directed, whereby it was to them jointly and severally committed, and by firmly injoining commanded, that they should cite, or cause to be cited peremptorily, such person so as aforesaid arms, or a coat of arms, as his proper family arms bearing, usurping or causing to be used, that he should appear before the same constable of *England* and marshal of *England*, or either of them, or before their deputies or vicegerents, or surrogates, or the deputy, vicegerent or surrogate, or either of them, or other judge in that behalf competent whatever, in a certain place judicial, and at a certain day between the hours

prefixed

prefixed then next following, to answer to articles, heads or interrogatories concerning such his or their contempt of the jurisdiction of the constable of *England* and the marshal of *England* for the time being, or either of them, and of the office and law of arms, in bearing, usurping, shewing and causing to be used arms, and coats of arms, as their proper family arms, which to such person or persons did in no manner belong, and which of right and by the law of arms such person could not nor ought to bear, and farther to do and receive what shall be right in that behalf, at the promotion of such advocate royal, or other person that suit in the same court *ex officio* promoting, and what they should do in the premisses, to the same constable of *England* and marshal of *England* for the time being, or either of them, or to their deputies or vicegerents, or surrogates, or to the deputy or vicegerent, or surrogate, of either of them, or to other judge in that behalf competent, they should duly certify, together with that process; and by virtue of such process such officers have caused to be cited such defendants in such process named to appear at such place and time in such process expressed, according to the command of that process: And the same *N. Lloyd* farther says, that *Charles* the second, late king of *England*, by his letters patent sealed under the great seal of *England*, bearing date at *Westminster* 19th day of *October* in the 24th year of his reign, gave and granted to *Henry* then lord *Howard*, baron *Howard* of *Castlerising*, and afterwards duke of *Norfolk*, the office of marshal of *England*, with all dignities, jurisdictions, rights and advantages whatsoever to the same office belonging and appertaining; To have and to hold the same office with the appurtenances to the said *Henry* then lord *Howard*, baron *Howard* of *Castlerising*, and afterwards duke of *Norfolk*, and to the heirs male of his body lawfully begotten, to be executed by himself or his sufficient deputies; by virtue of which said letters patent the said *Henry* then lord *Howard*, baron *Howard* of *Castlerising*, and afterwards duke of *Norfolk*, was seised of and in the office aforesaid with the appurtenances, as of fee-tail to him and his heirs male of his body lawfully begotten; and so being seised afterwards, to wit, on the 11th day of *January* in the year of the Lord 1683 at *Westminster* aforesaid died, whereby the office aforesaid with the appurtenances then and there descended to *Henry* late duke of *Norfolk*, as son and heir male of the same *Henry* lord *Howard*, baron *Howard* of *Castlerising*, and afterwards duke of *Norfolk*, whereby the same *Henry* the son, duke of *Norfolk*, was seised of and in the office aforesaid with the appurtenances, as of fee-tail; and so being thereof seised afterwards, and after the statute hereafter mentioned made, and likewise after the first day of *Easter* term, which was in the year of the Lord and above the space of 12 months and more the deputation hereafter mentioned made, to wit, 2d day of *April* in the year of the Lord 1701, at *Westminster* aforesaid died without issue of his body lawfully begotten; after whose death the office aforesaid

aforesaid with the appurtenances descended to *Thomas* now duke of *Norfolk*, as heir male of the body of the said *Henry* lord *Howard*, baron *Howard* of *Castlerising*, and afterwards duke of *Norfolk*, lawfully begotten, to wit, as son and heir male of the body of *Thomas Howard*, esq; deceased, commonly called the honourable *Thomas Howard* of *Workop*, second son of the said *Henry* lord *Howard*, baron *Howard* of *Castlerising*, afterwards duke of *Norfolk*; by virtue whereof the said *Thomas* now duke of *Norfolk* was seised and yet is seised of the office aforesaid with the appurtenances in fee-tail: And the same *N. Lloyd* farther says, that the same *Thomas* duke of *Norfolk* being so seised of the office aforesaid, for three months next after the time that he the same *Thomas* duke of *Norfolk* of the office aforesaid of marshal of *England* so as aforesaid was seised, and more, intirely neglected to receive the sacrament of the Lord's supper, according to the usage of the church of *England*, according to the form of the statute made in the parliament of the lord *Charles* the second late king of *England*, held at *Westminster* in the county of *Middlesex* in the 25th year of his reign, intituled, *An act for preventing dangers which may happen from popish recusants*, and the sacrament of the Lord's supper aforesaid, according to the usage aforesaid, within three months next after the death of the said *Henry* duke of *Norfolk*, the son, or within three months next after the time that he the same *Thomas* now duke of *Norfolk* of the office aforesaid of marshal of *England* so as aforesaid was seised, or at any time hitherto, hath not received; whereby the same *Thomas* now duke of *Norfolk*, by virtue of the statute aforesaid, became incapable to execute that office: And the said *Nathaniel Lloyd*, by leave of the court here to him first granted, according to the form of the statute in such case lately made and provided, to plead several matters farther says, that by the statute last mentioned it is enacted and provided, that neither that act nor any thing therein contained should extend, be adjudged or interpreted, to take away or make void the grant of any office or offices of inheritance, or any fee, salary or reward for executing such office or offices, or thereto any way belonging, granted by the said late king, or any his predecessors to, or enjoyed, or which then after should be enjoyed, by any person or persons who should refuse or neglect to take the said oaths, or either of them, or to receive the sacrament, or to subscribe the declaration mentioned in that act in manner therein expressed: Nevertheless so as such person or persons having or enjoying any such office or offices of inheritance did or should substitute and appoint his or their sufficient deputy or deputies (which such officer or officers respectively were thereby empowered from time to time to make or change, any former law or usage to the contrary notwithstanding) to exercise the said office or offices, until such time as the person or persons having such offices should voluntarily in the court of chancery before the lord chancellor or lord keeper for the time being, or in the court of

25 E. 2. c. 2.

4 A. c. 16.

[333]

king's bench, take the said oaths, and receive the sacrament according to law, and subscribe the said declaration; and so as all and every the deputy and deputies so as aforesaid to be appointed take the said oaths, receive the sacrament, and subscribe the said declaration from time to time, as they should happen to be so appointed, in manner as by that act such officers whose deputies they be are appointed to do, and so as such deputies be from time to time approved of by the king's majesty under his privy signet, as by that act, among other things, is more fully manifest and appears: And by reason of the premises, the same *Thomas duke of Norfolk* afterwards to wit, 27th day of *February* in the year of the lord 1705, at *Westminster* aforesaid in the county aforesaid, then as aforesaid being seised of the office aforesaid, the the same office being an office of inheritance, by his deed in writing sealed with his seal, bearing date the same day and year according to the form, and by virtue of the statute last mentioned, substituted and appointed the said *Henry earl of Bindon*, by the name of *Henry lord Walden*, his sufficient deputy to execute the said office of marshal of *England*, with all jurisdictions, rights, privileges and appurtenances thereto belonging and appertaining; which said *Henry earl of Bindon* afterwards, to wit, 10th day of *November* 1706, being *Sunday*, at *Westminster* aforesaid, according to the form of the statute in that case made and provided, received the sacrament of the Lord's supper in the parish church of *St. Margaret Westminster*, being a publick church, immediately after divine service and sermon; and also afterwards, to wit, 20th day of *November* 1706 above said, according to the form of the statute aforesaid, and several other statutes in such case made and provided, in the court of chancery of the lady the queen, before *W. Cooper*, esq; then lord keeper of the great seal of *England*, the same court then being at *Westminster* in the county aforesaid, took the several oaths, commonly called the oaths of allegiance and supremacy, and the oath of abjuration, and likewise then and there subscribed the declaration in that case by the statute required, as by the record thereof in the same court remaining more fully is manifest and appears: And the said *N. Lloyd* farther says, that the lady the now queen, after the said *Thomas duke of Norfolk* had so as aforesaid appointed the said *Henry*, now earl of *Bindon*, his deputy to execute the office aforesaid of marshal of *England*, to wit, 24th day of *August* 1706, by her letters under the privy signet at *Westminster* aforesaid made, according to the form of the statute aforesaid, approved the same *Henry earl of Bindon* to be the deputy of the said *Thomas duke of Norfolk*, to execute the office aforesaid, according to the tenor of the deputation aforesaid by the said *Thomas duke of Norfolk* to the same *Henry earl of Bindon* as aforesaid made: And the said *N. Lloyd* farther says, that 26th day of *April* 1707, and long before and continually afterwards from thence hitherto, the office of constable of *England* was vacant, and that the same *James Collet*, knt. on the same 26th day of *April* 1707, and long before and continually

Initially afterwards bore, caused to be used and usurped, the arms and coat of arms contained in the articles in the said declaration mentioned; as his family arms, which did not belong to him, to wit, at *Westminster* aforesaid in the county aforesaid; whereupon afterwards, to wit, the same 26th day of *April*, at the promotion of the said *N. Lloyd*, being then advocate royal in the court aforesaid, the same *Henry* earl of *Bindon* being as aforesaid, with the royal approbation, deputy or vicegerent, or surrogate, of the said *Thomas* duke of *Norfolk*, lord marshal of *England*, &c. at *Westminster* aforesaid in the court of honour then and there held, sent process in writing, directed to all and singular justices of the peace, sheriffs, bailiffs, constables and officers, and also to all his majesty's faithful subjects whomsoever in and throughout the whole kingdom of *England* wheresoever constituted, but especially to *Thomas Houseman*, mandatory or marshal of the court of the said *Henry* earl of *Bindon*, by the royal approbation, deputy or vicegerent, or surrogate, of the said *Thomas* duke of *Norfolk*, lord marshal of *England*; by which said process the same *Henry* earl of *Bindon*, by the royal approbation, deputy or vicegerent, or surrogate, of the said *Thomas* duke of *Norfolk*, lord marshal of *England*, to all and singular justices of the peace, sheriffs, bailiffs, constables and officers, and also to all his majesty's faithful subjects whomsoever in and throughout the whole kingdom of *England* wheresoever constituted, but especially to *Thomas Houseman*, mandatory or marshal of the court aforesaid, jointly and severally committed; and by firmly injoining, commanded that they should cite, or cause to be cited, peremptorily the said sir *James Collet*, knt. that he should appear before the same *Henry* earl of *Bindon*, or his vicegerent or surrogate, or other judge in that behalf competent whatsoever; on *Wednesday*, to wit, the 9th day of *May* between the hours of 3 and 4 in the afternoon of the same day, to answer to certain articles, heads or interrogatories concerning his contempt of the jurisdiction and authority of the same *Henry* earl of *Bindon*, by the royal approbation, deputy of *Thomas* duke of *Norfolk*, lord marshal of *England*, &c. and the office and law of arms, and particularly in bearing, usurping, shewing and causing to be used arms, and a coat of arms, as his proper family arms; and coat of arms which did in no manner belong to him, and which by the law of arms he could not nor ought in justice to bear, and farther to do and receive what should be right in that behalf; and that they should duly certify what they should do in the premises to the said *Henry* earl of *Bindon*, by the royal approbation, deputy of *Henry* duke of *Norfolk*, lord marshal of *England*, &c. or his vicegerent, or other judge in that behalf competent whatsoever; which said process afterwards, to wit, the same day and year at *Westminster* aforesaid, was delivered to the same *Thomas Houseman* in form of law to be executed; by virtue of which said process the said *Thomas Houseman* afterwards, to wit, on the said day of the return of that process, to wit, on the 9th day of *May* 1707 aforesaid in the court of honour aforesaid before

[334]

fore the said *Henry* earl of *Bindon*, of *Thomas* duke of *Norfolk*, lord marshal of *England*, &c. by royal approbation, deputy or vicegerent, to wit, at *Westminster* aforesaid returned the process aforesaid in all things served and executed, at which said court of honour duly there held, the same *James Collet* appeared and the said *Nathaniel Lloyd* then and yet being advocate royal in the same court according to the said custom of the court aforesaid, for all the said time used and approved, exhibited and caused to be exhibited, in the same court of honour, the articles aforesaid in the declaration aforesaid abovementioned, as according to the custom of the court aforesaid for all the time aforesaid, used and approved he lawfully might and ought; which said process, citation and articles for the cause abovesaid, in manner and form prosecuted, issued and promoted, are the same grievances whereof the said *James Collet*, knt. above in declaring hath alledged: And this the same *Nathaniel Lloyd* is ready to verify: Wherefore he prays judgment, and the writ of the said lady the queen of consultation to him in this behalf to be granted, &c.

Tho. Parker,
Ro. Raymond.

Demurrer.

And the same *James Collet*, who as well, &c. as to the plea of the said *Nathaniel* to have the writ of the lady the queen of consultation above pleaded, by protesting, that from time immemorial no such court of honour, as in the said plea of the said *Nathaniel* and in his libel aforesaid is above specified, was held, nor hath been accustomed to be held, nor lawfully could be held, either before the constable of *England* or before the marshal of *England* for the time being separately, nor before the deputy or vicegerent, or surrogate, of either of them, as the said *Nathaniel Lloyd* above hath alledged; neither hath any such court of honour ever been accustomed to be held, nor ought, nor lawfully could be held, unless before the constable of *England* and the marshal of *England* for the time being jointly, or the deputy or vicegerent, or surrogate of both of them, for plea says, that the same plea of the said *Nathaniel* for a consultation so as aforesaid pleaded, and the matter in the same contained, are not sufficient in law to maintain him the said *Nathaniel* to have such writ of consultation; and that the said *James*, who as well, &c. to that plea in manner and form aforesaid pleaded hath no necessity, nor is by the law of the land obliged, in any manner to answer: And this he is ready to verify: Wherefore for want of a sufficient plea of the said *Nathaniel* in this behalf, the same *James Collet*, who as well, &c. prays judgment, and that no writ of the lady the queen of consultation in this behalf may be granted, and costs, &c. to him the said *James* to be adjudged, &c.

3

L. Agar.

And

And the said *Nathaniel Lloyd* says, that the said plea by the said *Nathaniel Lloyd* to have a consultation as aforesaid pleaded, and the matter in the same contained, are good and sufficient in law to maintain him the said *Nathaniel* to have such writ of consultation: And this the same *Nathaniel* is ready to verify: Which said matter the said *James* doth not deny, nor thereto in any wise answer; therefore the same *Nathaniel Lloyd* prays judgment, and that to the same *Nathaniel* the writ of the said lady the now queen of consultation in this behalf by the court here may be granted, &c. But because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the lady the queen at *Westminster* until to hear their judgment thereon, because the court of the said lady the queen now here thereof not yet, &c.

Joinder.

Pope against Cross and another.

[335]

H. 13 W. 3. Roll 23. K. B.

BE it remember'd, that on the 20th day of *June* in this same term comes here into court *Robert Pope* of, &c. by *John Lilly* his attorney, and gives the court here to understand and be informed, that the town and hamlet of *Parson Drove* is, and from time out of mind hath been, an antient town and hamlet in the parish of *Levrington* in the county aforesaid, within which said town and hamlet there is, and for all the time aforesaid hath been a certain antient parochial chapel or church, called the chapel of *St. John the Baptist*; which said church or parochial chapel contains in it not only the body of a church, but also a steeple, bells, seats, a font to baptize, a church yard, and all other parochial ensigns for divine service there to be performed, and sacraments and sacramentals there to be celebrated: And whereas also the inhabitants of the said town and hamlet of *Parson Drove* for the time being, by the provision of the same town and hamlet, have for time out of mind, at their proper costs and charges, supported and maintained, and for all the time aforesaid have been used and accustomed to support and maintain a certain minister or chaplain in holy orders in the church of *England*, according to the rites and ordinances of the same church, to celebrate divine service, and the sacraments and sacramentals in the said parochial chapel or church in the town and hamlet of *Parson Drove* aforesaid to be celebrated, done and performed, and a clerk to attend and serve the said chaplain or minister in the celebration of divine service; which said minister or chaplain of the parochial chapel or church aforesaid for all the time aforesaid divine service, sacraments and sacramentals, in the said parochial chapel or church of the town and hamlet of *Parson Drove* aforesaid to the inhabitants of the town of *Parson Drove* aforesaid, by himself or his sufficient deputy, hath celebrated, and for all the time aforesaid

Suggestion concerning the bounds of a parish.

said hath been used and accustomed to celebrate: And whereas all and singular the chaplains and ministers of the parochial chapel or church of the town and hamlet of *Parson Drove* aforesaid for the time being, and for all the time aforesaid, have been used and accustomed yearly to go and perambulate in and about the limits, metes and bounds of the said town and hamlet of *Parson Drove*, in solemn procession: And whereas also the rector of the church of *Levrington* aforesaid and his predecessors, rectors of the same church respectively for the time being, and the inhabitants within the said parish of *Levrington* without the said town and hamlet of *Parson Drove* aforesaid, in their yearly perambulations yearly for all the time aforesaid made and used, never any perambulation within the limits and bounds of the said town and hamlet of *Parson Drove* aforesaid made, but out of the said town and hamlet of *Parson Drove* aforesaid, and the bounds of the same, have gone and walked, and the said town and hamlet of *Parson Drove*, and the limits and bounds of the said town and hamlet of *Parson Drove* aforesaid, out of their perambulations aforesaid have excluded, and to omit and exclude for all the time aforesaid have been used and accustomed: And whereas also the inhabitants of the said town and hamlet of *Parson Drove* to the church of *Levrington* aforesaid to perform divine service there, or to celebrate the sacraments, or any sacramentals whatever there, or to do or execute any other thing there, (except burial for the dead) at any time heretofore have not used to come, nor of right ought, but from the said church of *Levrington*, and the inhabitants of the parish of *Levrington*, as to the premisses, (except burial aforesaid) are altogether separated and divided; and the said inhabitants of the said town and hamlet of *Parson Drove* have no seats or places to sit, nor places to be in the said church of *Levrington* aforesaid, nor ever at any time past hitherto, have had: And whereas also the said inhabitants of the town and hamlet of *Parson Drove* aforesaid from time out of mind the said parochial chapel or church at their own proper costs and charges have repaired and maintained, and of right ought to repair and maintain, and for all the time aforesaid have been used, and have at their own proper costs found and provided all and singular the ornaments and necessities for the said parochial chapel or church, and for all the time aforesaid have been used and accustomed to find and provide, without any contribution or allowance thereto by any of the inhabitants in the parish of *Levrington* aforesaid, or by the rector of the said church of *Levrington*, made or allowed; and by reason of the premisses, the said inhabitants of the said town and hamlet of *Parson Drove* aforesaid from the reparation of the said church of *Levrington* aforesaid, and from all impositions and taxes concerning the church of *Levrington* aforesaid, have been free and acquitted for all the time aforesaid always hitherto, as of right they ought: And whereas also the inhabitants of the said town and hamlet of *Parson Drove*, every year for all the time aforesaid

said two church-wardens of the parochial chapel, or their church of *Parson Drove*, from the inhabitants of the said town and hamlet of *Parson Drove*, to execute and exercise that office for a year, have elected, appointed and ordained; which said church-wardens so elected the office of church-wardens of the parochial chapel or church of *Parson Drove* aforesaid have well and faithfully for all the time aforesaid executed, and the said inhabitants of *Parson Drove* aforesaid to the church-wardens of *Levrington* aforesaid have hitherto used to be in nothing subject or attendant, but have always hitherto been clear and free from them, and from all their taxations and presentments: And whereas also the trial and determination of the cause aforesaid is a matter triable at the common law, and ought not to be tried or determined in any manner by the laws or censures ecclesiastical, nor from time out of mind hath been accustomed to be: Nevertheless *John Crofs* and *William Thacker*, now or late church-wardens of *Levrington* aforesaid, knowing all and singular the premisses to be true, contriving and intending the inhabitants of the said town and hamlet of *Parson Drove* to load with illegal charges, taxes and impositions, against the law of the land of this kingdom of *England*, and to violate and subvert the laudable customs aforesaid hitherto inviolably observed, the said *Robert Pope*, an inhabitant within the said town and hamlet of *Parson Drove*, and not elsewhere, at the time in the libel hereafter mentioned, or at any time then past, or at any time after hitherto, and not having any lands, tenements or possessions in the parish of *Levrington* aforesaid, out of the town and hamlet of *Parson Drove* aforesaid, whereby the said *Robert Pope* with the payment or contribution of a certain sum of money to the repairs of the church of *Levrington* lawfully or legally ought or could be charged to pay any rates, portions or sums of money, on him by the said *John Crofs* and *W. T.* then or late wardens as aforesaid of the said church of *L.* aforesaid, and the parishioners of the said parish of *L.* or the major part of the same parishioners of the said parish of *L.* then present, and the rector of the said parish of *L.* to the repairs of the church of *L.* aforesaid the said *R. Pope* have unjustly taxed and imposed, and to pay have caused, or at least endeavoured; and for the non-payment thereof the same *J. Crofs* and *W. T.* have prosecuted the said *R. Pope* in the court christian, before *W. Cooke*, doctor of laws, of the reverend *Simon*, by divine permission lord bishop of *Ely*, vicar general in spirituals, and official principal lawfully constituted, or his surrogate, or other judge in that behalf competent, against the law and customs aforesaid, cautiously and subtilly libelling against the said *R. Pope*, by the name of *R. Pope* of *Levrington Parson Drove*, commonly called *Parson Drove*, among other things, that in the months of *March A. M. J. J. A. S. O. N. D. J. F. and M.* happening respectively in the years 1697, 1698, and 1699 now current, and of those months and years every more than one or some, the parochial church of *L.* aforesaid was

broken and ruinous, and had and hath sundry defects and decays, and did and doth want reparation, rebuilding, and necessary provision to be made; and by reason and occasion of the premises, the taxation and contribution of the parishioners, inhabitants and others, lands, meadows, tenements and other things taxable within the parish of *Lewrington* and *Lewrington Parson Drove* respectively having, occupying and possessing, hath been, was and is necessary. *Item*, that the hamlet of *L. Parson Drove* was and is within the parish, limits and precincts of *L.* aforesaid, and was and is within the parish of *L.* aforesaid; and the church of *L.* aforesaid was the mother church of the same, and the chapel commonly called the chapel of *St. John the Baptist* there, and the said chapel of *St. John the Baptist* aforesaid in *Parson Drove* aforesaid, was and is a chapel of ease to the articulate mother church of *L.* aforesaid; so that 20th day of the month of *April* 1699, after lawful and sufficient notice and intimation to all and singular having or pretending to have interest in that behalf, openly and publickly in and about the parochial church of *L.* aforesaid, on *Sunday*, to wit, 16th day of *April*, according to the accustomed places, while the greater part of the people were there present, made and published for a parish meeting at 10 of the clock in the morning of the 20th day of *April* aforesaid in the town-hall in *L.* aforesaid; he propounds nevertheless of any other time, day, hour and place, in the said monition, notice or intimation aforesaid, the parishioners did meet and constitute a rate or tax towards the reparation of the ruins, defects and decays of the said parochial church of *L.* aforesaid, in all necessities for the same by the said church-wardens, with the consent of the major and better part of the inhabitants and parishioners of *L.* aforesaid then and there present, 6 *d.* the pound upon lands in *L.* and *Lewrington Parson Drove* aforesaid, rightfully and lawfully, and according to the custom of the parish aforesaid, the bell being tolled at or about the hours of 9 or 10 of the clock to give the parishioners, and all concerned, fair and legal notice of the time and place of meeting, hath been and was made and constituted; wherein you the said *R. Pope* was taxed, laid and rated the sum of 2*l.* of good and lawful money, for, &c. more or less respectively by you occupied and possessed within the hamlet of *Lewrington Parson Drove* aforesaid, within the parish, precincts and rateable places of *L.* aforesaid, in the months and years libellate and articulate, or of them every more than one or some towards the said repairs, as by the declaration or libel aforesaid in the said court christian before the said judge spiritual, against the said *R. Pope* as aforesaid exhibited, among other things, more fully appears: And although the said *R. P.* all and singular the premises in the said court christian before the said judge spiritual hath acknowledged, and the same with inevitable truth and testimony hath offered to prove: Nevertheless the said judge spiritual the said plea, allegation and proof, hath absolutely refused to admit or receive; and the said *Jahn Crofs* and *W. T.* the same *R. Pope* in the said court christian of and upon the premises to cause to be

be condemned, and wrongfully to be compelled to pay the several sums of money in the libel aforesaid above specified, by the definitive sentence of the said court christian, with all their might endeavour and daily contrive, in contempt of the said lord the now the king, and to the manifest damage, prejudice and impoverishment of him the said *R. Pope*, against the law and customs aforesaid: And this the same *R. Pope* is ready to verify: Wherefore the said *R. Pope* most humbly imploring the aid and assistance of the court of the said lord the king prays remedy, and the writ of the lord the now king of prohibition to be directed to the said judge spiritual, to prohibit him that he may not farther hold before him the plea aforesaid in any manner touching the premises: And it is granted him.

England, to wit. **B**E it remember'd, that on day next after (the first day of the term) in this same term before the lady the queen at *Westminster* comes *Elizabeth Adams* by *John Allen* her attorney, and gives the court of the lady the queen now here to understand and be informed, that whereas the *English* words following are words of heat and passion only, without any malice or intention to defame *G. Butler*, clerk, hereafter mentioned, in his person or function, and not so grievous, dangerous or scandalous; for the speaking or publishing whereof any action, citation or prosecution, in any court christian by the law of the land of this kingdom of *England* ought, hath been used or accustomed to be had or maintained: And whereas also all and all manner of pleas, or actions of trespass on the case, arising and happening within this kingdom of *England*, to the lady the now queen and her royal crown, and to the temporal courts of the said lady the queen, and not to the court christian, according to the law and custom of the kingdom of *England* do belong and appertain: Nevertheless one *George Butler*, clerk, rector of the parochial church of *Lichborow* in the county and archdeanary of *North'ton* and diocese of *Peterborough*, well knowing the premises, but contriving her the said *Elizabeth* wrongfully to aggrieve and oppress, the said *Elizabeth* being likewise an inhabitant within the parish aforesaid, to another proof in the court christian before the venerable man *R. Reynolds*, doctor of laws, of the reverend father in Christ *Richard*, by divine permission lord bishop of the borough of *St. Peter*, otherwise *Peterborough*, vicar in spirituals, official general, or his surrogate, against the due form of the law of this kingdom of *England*, and against the custom aforesaid, for a certain cause of a supposed contempt, scandal and disgrace of the said *George Butler*, hath wrongfully drawn in plea to answer to certain articles by the said *George* in the same court christian against her the said *Elizabeth* in the premises exhibited and promoted, and cautiously and subtilly there articulating and objecting, that the said *Elizabeth* in the months of *September, October, November, December, January, February, &c.* last past, or in one of those

Suggestion for a prohibition for scandalous words of a person in holy orders.

those months, within the said parish of *Lichborow* aforesaid, and other publick places to the same near, contiguous and adjoining, the said *George Butler* of or with the within written not defamed but being in good reputation, did wickedly, falsly and maliciously defame, and some infamous, scandalous, opprobrious and defamatory words, sounding and tending to the infamy, hurt, blackening and diminution of the estate, good name and reputation of the said *George Butler*, and especially these *English* words, or others importing the same sense and effect, to wit, speaking to the said *George Butler*, You are a rogue and a rascal, with many other defamatory words, openly, publickly, and out of rage, hatred or envy, and with an intent to defame him, against good manners and the bond of charity, often, or at least once, and before credible witnesses spoke, asserted, pronounced and published; and the said *George* her the said *Elizabeth* in the said court christian before the said judge spiritual of and upon the premises to appear hath wrongfully obliged, and the same *Elizabeth* thereupon there to answer, and in the premises to cause to be condemned with all his might endeavours and daily contrives, in contempt of the said lady the now queen, and against the law and custom of this realm of *England*, to the manifest damage, prejudice and grievance of her the said *Elizabeth*: And this she is ready to verify: Wherefore the said *Elizabeth* most humbly imploring the aid of the court of the said lady the queen now here prays remedy, and the writ of the said lady the queen of prohibition to the said judge spiritual of the said court christian, or other judge in this behalf competent whatever, in form of law to be directed, to prohibit him that he may not farther hold before him the plea aforesaid in any wise touching the premises aforesaid: And to her it is granted, &c.

[338]

Suggestion for
a prohibition for
scandalous words
of a church-
warden.

England, to wit. **B**E it remember'd, that on -day next after in this same term before the lord the king at *Westminster* comes *J. T.* an inhabitant in the parish of *W.* in the county of *Sussex*, within the archdeanary of *Lewis* in the diocese of *Chichester*, by *J. L.* his attorney, and gives the court here to understand and be informed, that the venerable and excellent man *T. B.* doctor of laws, of the reverend father in Christ by divine permission lord bishop of *Chichester*, in and thro' the whole archdeanary of *Lewis* in the diocese of *Chichester*, commissary or official principal lawfully constituted, at the instance and promotion of *J. E.* late one of the wardens of the parochial church of *W.* aforesaid, against the due form of the law of this kingdom of *England* to aggrieve, oppress and fatigue, and to another proof in the court christian before the said *T. B.* to draw him the said *J. T.* for a certain cause of contempt, scandal and disgrace of the said *J. E.* lately hath drawn in plea, to answer to and upon certain articles by the said *T. B.* exhibited, cautiously and subtilly libelling, and in the same court christian against him the said *J. T.* articulating and objecting,

objecting, that the said *J. T.* well knowing the said *J. E.* in the year of the Lord, &c. and in the months in the same year concurring, had been warden of the parochial church of *W.* in the county aforesaid, he the said *J. T.* in the years and months aforesaid in the year of the Lord, &c. and also in some or one of the months in the year of the Lord, &c. falsely, maliciously and scandalously, to and of the said *J. T.* (who had been warden and officer of the church) speaking, uttered and spoke in these *English* words following, or in others like them in effect, to wit, Thou, you or he art, are or is a cheating knave, and you have cheated the poor, and especially *J. N.* at *W.* aforesaid in the county aforesaid said, spoke and pronounced, *Item*, That you the said *J.* are a person that make it your business to scandalize and abuse your neighbours, and when you are drunk you do commonly slander them in most opprobrious words, and sow discord among them, to wit, at *W.* aforesaid in the county aforesaid, in all the months and years in the article aforesaid abovementioned; and the same *J. T.* in the court christian before the said judge spiritual to appear hath unjustly compelled, and the same *J. T.* in the court christian in the premisses to cause to be condemned, in contempt of the said lord the now king, and against the law and custom of this kingdom of *England*, with all his might earnestly endeavours, to the manifest damage, prejudice and grievance of the said *J. T.* And this he is ready to verify: Wherefore the said *J. T.* most humbly imploring the aid of the court of the said lord the now king now here prays remedy, and the writ of the said lord the king of prohibition to the said judge spiritual of the said court christian, or other judge in this behalf competent whatever, in form of law to be directed, to prohibit him that he may not farther hold before him the plea aforesaid in any wise touching the premisses: And to him it is granted, &c.

Hill. 7 Geo. Roll. 721.

Afterwards, to wit, on the 20th day of *M.* in the 7th year of the reign of the lord *George*, now king of *Great Britain*, &c. at *Newcastle under Line* in the county of *S.* aforesaid, comes the said *Andrew Mills* by the said *H. G.* his attorney, before *R. A.* gent. one of the commissioners by the justices of the lord the king of the bench at *Westminster* in the county of *Middlesex*, to take affidavits and depositions in and for the said county of *S.* duly constituted, according to the form of the statute in such case made and provided, and to prove and verify his suggestion aforesaid, and all and every thing in the same suggestion contained, on the part of him the said *Andrew* to be proved, according to the form of the statute in such case made and provided, hath produced two sufficient witnesses, to wit, *R. P.* of *M.* in the county of *S.* aforesaid, husbandman, and *T. M.* of *M.* aforesaid, gent. which said *R. P.* and *T. M.* so produced by the said *R. A.* on the Holy Evangelists, to the truth of and upon the premisses in the suggestion

The entry of the
inrolment of
affidavits to
prove the sug-
gestion.

Pract. Reg.
385, 399.
29 C. 2. c. 5.

2 & 3 E. 6.
c. 12. § 14.
par. 2.

Prohibition.

gestion afore said specified then and there were sworn; and the said *R. P.* on his oath afore said says and deposes in manner and form following, to wit, *R. P.* (*so on verbatim to except as before excepted*) which said affidavits or depositions *Peter King*, knt. chief justice of the lord the king of the bench, afterwards, to wit, on the 9th day of *June* in the 7th year of the reign of the lord the now king, at *Westminster* afore said hath allowed as proof of the suggestion of the said *Andrew* afore said, and then and there ordered and appointed them to be inrolled of record in the court of the said lord the king of the bench here: Therefore they are inrolled, &c.

Quare

Quare Impedit.

[339]

The king against Pryor and Dandy,

H. 7 W. 3. Roll 1720. in C. B.

England, to wit. **T**HE Lord the king hath sent to his trusty and beloved *George Treby*, knt, his chief justice of the bench his writ close in these words, to wit, *William the third* by the grace of God of *England, Scotland, France and Ireland* king, defender of the faith, &c. to his trusty and beloved *George Treby*, knt, his chief justice of the bench, greeting: Whereas in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before you and your companions, our justices of the bench, by our writ between us and *Thomas Pryor*, gent. and *Thomas Dandy*, clerk, for that the same *Thomas* and *Thomas* unjustly hinder'd us from presenting a proper person to the church of *Shawell* in the county of *Leicester*, which is vacant and belongs to our donation, as it is said, a manifest error hath happened, to the great damage of them the said *Thomas* and *Thomas*, as by their complaint we have understood: We willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the said *T.* and *T.* in this behalf, command you, that if judgment therein be given, then the record and proceedings aforesaid, with all things aforesaid, with all things touching them to us under your seal, you distinctly and openly send, and this writ, so that we may have them from the day of wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein to correct that error, what of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness *Thomas* archbishop of *Canterbury*, and the other keepers and justices of the kingdom, at *Westminster* 11th day of *May* in the 8th year of our reign.

The answer of George Treby, knt, the chief justice within named:

The record and proceedings of the plea, whereof mention is within made, with all things touching them, before the lord the king

Error in K. B.
in a *Quare Im-*
pedis.
Parl. Rep. 164,
186, 212, 224.

The return

king wheresoever, &c. at the day within contained, I send in a certain record to this writ annexed, as I am within commanded.

Geo. Treby.

The transcript.

Pleas inrolled at Westminster before George Treby, kn. and his companions, justices of the lord the king of the bench of Hillary term in the 7th year of the reign of the lord William the third, by the grace of God of England, Scotland, France and Ireland king, defender of the faith, &c. Roll 1720.

Count, that C. a. was seised of the advowson in gross,

[340]

And presented his clerk, who &c.

Discent. to J. 2.

On his abdication W. and M. became seised.

The church became void, and so &c.

Otherwise, as it appears in *Hillary* term in the 6th year of the reign of the lord the now king, *Roll 1732*, it is contained thus: *Leicester*, to wit, *T. P.* gent. and *T. D.* clerk, were summoned to answer to the lord the now king and to the lady *Mary* late queen of *England*, &c. in a plea, that they may permit them the said lord and lady the king and queen to present a proper person to the church of *Shawell*, which is vacant and belongs to their donation, &c. And whereon *Edward Ward*, kn. the attorney general of the said lord the now king, who for the said lord the king prosecutes, for the said lord the king says, that *Charles* the second, late king of *England*, was seised of the advowson of the church aforesaid, as of a gross by itself, as of fee and right, in the right of his crown of *England*; and being so thereof seised, the same late king *Charles* the second to the same church, being vacant, presented one *John Parkes* his clerk, who on the presentation of him the said late king was admitted, instituted and inducted into the same, in the time of peace in the time of the said late king *Charles* the second; and the said late king being so as aforesaid seised of the advowson of the church aforesaid, the same late king *Charles* the second afterwards at *Westminster* in the county of *Middlesex* died so thereof seised; after whose death the advowson of the church aforesaid descended to the lord *James* the second, late king of *England*, as brother and heir of the said late king *Charles* the second, whereby the same late king *James* the second was seised of the advowson aforesaid, as of a gross by itself, as of fee and right, in the right of his crown of *England*; and the same late king *James* the second so being thereof seised, afterwards at *Westminster* aforesaid abdicated himself from the government of his kingdom of *England*, whereby the advowson of the church aforesaid came to the said lord the now king and the lady the late queen, whereby the same lord the now king and the lady the late queen were seised of the advowson aforesaid, as of a gross by itself, as of fee and right, in right of their crown of *England*; and they being so thereof seised, the church aforesaid became vacant by the death of the said *J. P.* and yet is vacant, and on that account to them the said lord the king and the lady the late queen it did belong, and to him the said lord the now king it doth at present belong to present a proper person to the said church, being vacant; and the said *T. P.* and *T. D.* them the said lord the king and the lady the late queen have hinder'd, and

him the said lord the now king do thereof unjustly hinder, to the damage of the said lord the king 200*l*. And this the same attorney general for the said lord the king is ready to verify, &c.

And the said *T. P.* in his proper person, and the said *T. D.* by *T. P.* his attorney come and defend the force and injury when, &c. and pray leave to imparl thereto here from the day of *Easter* in fifteen days; and they have, &c. The same day is given to the said attorney general of the said lord the now king, who, &c. here, &c. On which day here come as well the said attorney general of the said lord the now king, who, &c. as the said *T. P.* in his proper person, and the said *T. D.* by the said *T. P.* his attorney aforesaid; and hereupon the same *T. and T.* farther pray leave to imparl thereto here until on the morrow of the Holy *Trinity*; and they have, &c. The same day is given to the said attorney general of the said lord the now king, who, &c. here, &c. On which day here come as well the said attorney general of the said lord the now king, who, &c. as the said *T. P.* in his proper person, and the said *T. D.* by the said *T. P.* his attorney aforesaid; and upon this the same *T. and T.* pray leave to imparl thereto here until from the day of *St. Michael* in three weeks; and they have, &c. The same day is given to the said attorney general of the said lord the now king, who, &c. here, &c. On which day here come as well *T. Trevor*, *knt.* now attorney general of the said lord the now king, who for the same lord the now king prosecutes, as the said *T. P.* in his proper person, and the said *T. D.* by the said *T. P.* his attorney aforesaid; and hereupon the same *T. P.* and *T. D.* farther pray leave to imparl thereto here until in the octave of *St. Hillary*; and they have, &c. The same day is given to the said attorney general of the said lord the king, who, &c. And now here on this day, to wit, the said octave of *St. Hillary*, come as well the said *T. Trevor*, *knt.* attorney general of the said lord the now king, who, &c. as the said *T. P.* in his proper person, and the said *T. D.* by the said *T. P.* his attorney aforesaid; and the said *T. Trevor*, *knt.* attorney general of the said lord the now king, who, &c. prays that the said *T. P.* and *T. D.* to the declaration aforesaid may answer, whereupon the said *T. P.* and *T. D.* as before, defend the force and injury when, &c. And the same *T. P.* the now defendant, says, that one *P. Temple*, *esq;* was seised of the manor of *Shawell* with the appurtenances in the county aforesaid, to which the advowson of the church aforesaid belonged in his demesne as of fee; and so being thereof seised, the same *P. T.* afterwards, to wit, the 17th day of *February* 1653, at *S.* aforesaid, by his certain indenture made between him the said *P.* on the one part, and one *T. Tory*, *esq;* on the other part, one part whereof sealed with the seal of the said *Peter*, the same *T. P.* the now defendant here in court produces, the date whereof is the same day and year, demised to the same *T. Tory* the manor aforesaid with the appurtenances to which, &c. To have and to hold to the same *T. Tory*, his executors, administrators and assigns, for and during the term of 1000 years from thence next ensuing and fully to

Imparlanca.

P. T. seised of the manor of *S.* to which, &c. And demised it to *T. T.* for 1000 years,

who assigned it to
T. Plampin,

[341]

who presented,
&c. and died,

and his adminis-
trator granted
the next present-
ment to the de-
fendant T. P.
who presented
the other defend-
ant, &c.

be compleat and ended, as by the same indenture, among other things, is more fully manifest and appears: By virtue of which said demise, the same T. T. into the manor aforesaid with the appurtenances to which, &c. entred, and was thereof possessed for the said term of 1000 years to him as aforesaid granted; and being so thereof possessed, the same T. T. afterwards, to wit, the 25th day of July in the year of the Lord 1656, at S. aforesaid, by his certain indenture tripartite made between him the said T. T. of the first part, and the said T. P. of the second part, and one T. Plampin of the third part, the first part of which said indenture, sealed with the seal of the said T. T. the same T. P. here in court produces, the date whereof is the same day and year, granted and assigned to the said T. Plampin all his estate, right, title and interest, and term of years, of and in that manor with the appurtenances to which, &c. then to come and unexpired: By virtue of which said grant and assignment the same T. P. into the manor aforesaid with the appurtenances to which, &c. entred, and was thereof possessed; and being so thereof possessed, the reversion thereof to the said P. T. in form aforesaid belonging, the church aforesaid became vacant by the death of W. Mill, clerk, the then incumbent of the church of S. aforesaid, whereby the said T. P. to the same church, being then vacant, presented one J. P. his clerk, who on the presentation of the same T. Plampin was admitted, instituted and inducted, into the same in the time of peace in the time of the said Charles the second, late king of England, &c. and the said T. P. of the manor aforesaid with the appurtenances to which, &c. in form aforesaid being possessed, and the church aforesaid of the said J. P. the incumbent of the same, so as aforesaid being full and consulted, the said T. P. afterwards, to wit, the day of in the year at S. aforesaid died intestate of the manor aforesaid with the appurtenances to which, &c. for the residue of the said term of 1000 years, in form aforesaid demised, and as aforesaid possessed; after whose death administration of all and singular the goods and chattels, rights and credits, which belonged to the said T. P. at the time of his death, by William by divine providence archbishop of Canterbury, primate and metropolitan of all England, at S. aforesaid, on the 20th day of M. 1691, to one E. P. the natural and lawful son of the said T. P. was duly committed: By virtue whereof the same E. P. into the manor aforesaid with the appurtenances to which, &c. entred, and was thereof possessed by reason of the administration aforesaid; and so being possessed of the manor aforesaid with the appurtenances to which, &c. and the said J. P. being in the actual possession of the said church of S. and so incumbent of the same, the said E. P. afterwards, to wit, on the 20th day of February 1691, by his certain writing, which the said T. P. the now defendant, sealed with the seal of the said E. here in court produces, the date whereof is the same day and year, at S. aforesaid, gave and granted to the said T. P. the now defendant, the next advowson, donation, collation, free presentation, and free disposition of the parochial

parochial church of *S.* aforesaid, for the then next avoidance and next advowson of the same; so that it should and might be lawful for the said *T. P.* and his assigns, by virtue of the writing aforesaid, to present any proper person to the church aforesaid, when the same church as aforesaid by death, resignation, privation, cession, or any other ways or means whatever, should next happen to be vacant, as by the writing aforesaid, among other things, is more fully manifest and appears: By virtue of which grant the same *T. P.* was possessed of the advowson of the same church for the next avoidance of that church; and so being thereof possessed, the church aforesaid afterwards, to wit, on the day of 1694 became void by the death of the said *J. P.* whereby the said *T. P.* the now defendant, to the same church, so being vacant, presented the said *T. D.* his clerk, who on the presentation of him the said *T. P.* was admitted, instituted and inducted into the same, and by virtue of that presentation was put into the actual possession of the same church in the time of peace in the time of the lord the now king of the lady *Mary* late queen of *England*, and in the same is canonically parson imparsonce of that church; without that, that the said *J. P.* was admitted and instituted in that church on the presentation of the said late king *Charles* the second, as by the declaration aforesaid is above supposed; And this he is ready to verify: Wherefore he prays judgment if the said lord the now king ought to have his action aforesaid against him, &c.

Traverse;

And the said *T. D.* says, that he is parson of the said church of *S.* aforesaid, imparsonce in the same on the presentation of the said *T. P.* which said presentation to him the said *T. P.* for the cause and in the form aforesaid by him the said *T. P.* above alledged, belonged; without that, that the said *J. P.* was admitted and instituted in that church on the presentation of the said late king *Charles* the second, as by the declaration aforesaid is above supposed: And this he is ready to verify: Wherefore he prays judgment if the said lord the now king ought to have his action aforesaid against him, &c.

The incumbent says he is parson imparsonce, and traverses as above.

And the said *T. T.* knt. attorney general of the said lord the king, who for the said lord the king prosecutes, as to the said plea of the said *T. P.* above pleaded in bar, for the said lord the king says, that the said lord the now king by any thing in the same plea before alledged ought not to be precluded from his action aforesaid against the same *T. P.* had, because he says, as before is said, that the said *J. P.* was admitted and instituted in the church aforesaid on the presentation of the said late king *Charles* the second, in manner and form as by the declaration aforesaid above is supposed: And this the said attorney general of the said lord the now king, who, &c. for the same lord the king is ready to verify where and when, and as the court here will consider; and the said *T. P.* likewise: And as to the said plea of the said *T. D.* above in bar pleaded, the same *T. T.* the attorney general of the said lord the now king, who, &c. for the

Issue on the parson's traverse.

Issue on the incumbent's traverse.

† 342]

The issues sent
to the bishop of
the diocese to be
tried.

The bishop's cer-
tificate.

Judgment.

the same lord the king says, that the said lord the now king by any thing in the same plea before alledged ought not to be precluded from his action aforesaid against the same *T. D.* had, because he says, as before is said, that the said *J. Parkes* was admitted and instituted in the church aforesaid on the presentation of the said late king *Charles* the second; in manner and form as by the declaration aforesaid above is supposed: And thus the same attorney general of the said lord the now king, who, &c. for the same lord the king is ready to verify where and when, and as the court here will consider; and the said *T. D.* likewise: Therefore to try as well the issue aforesaid between the same lord the king and the said *T. D.* above joined, as the said issue between the same Lord the king and the said *T. P.* above joined, because the trial and cognisance of those issues belongs to the ecclesiastical court; and ought to be tried there, and from thence certified to the justices here; therefore the reverend father in Christ *James* bishop of *Lincoln*, the ordinary of that place, is commanded, that the parties in this behalf proper to be called being called before him, he diligently inquire concerning the truth of the fact on the premisses, and what he shall find thereon cause to be certified to the justices here from the day of *Easter* in 15 days by his letters patent and close: The same day is given as well to the said attorney general, who, &c. as to the said *T. P.* and *T. D.* here; &c. And now here on this day, to wit, the said 15th day of *Easter*, come as well the said *T. T.* knight attorney general of the said now lord the king, who, &c. as the said *T. P.* in his proper person, and the said *T. D.* by *T. P.* his attorney aforesaid; and the said *James* bishop of *Lincoln*, by his letters patent and close hath certified to the justices here, that he, by virtue of the writ aforesaid to him directed, the registers and other memorandums of him and his predecessors, late bishops of *Lincoln*, being searched, and all other matters in the same writ specified belonging to his pastoral office in that behalf being rightly and duly observed, according to the order of the ecclesiastical law, and also the parties in that behalf proper to be called, hath made diligent inquiry concerning the truth of the fact of and upon the issues in the same writ mentioned, whereby he hath plainly and evidently perceived and found by lawful proof and other things in this behalf requisite, and the same bishop to the justices here hath certified, that the said *J. P.* on the 30th day of *November* 1671, at *B.* in the county of *H.* within the diocese of *Lincoln*, by *William* late bishop of the same diocese, on the presentation of the lord *Charles* the second, late king of *England*, in the said church of *S.* was admitted and instituted: Therefore it is considered, that the said lord the now king do recover against the said *T. P.* and *T. D.* his presentation to the said church of *S.* aforesaid, and have a writ to the said *J.* that notwithstanding the claim of the said *T. P.* and *T. D.* altho' the same *T. D.* to the same church is admitted, instituted and inducted, he remove the said *T. D.* from the said church, and without delay admit a proper person to the same church,

church, at the presentation of the said lord the king: And the said T. P. and T. D. in mercy, &c.

The King against the Bishop of London and Lancaster.

Hill. 4 & 5 W. & M. in K. B. Roll 965.

Midd., to wit. **H**enry bishop of *London*, and *W. Lancaster* professor of divinity, were summoned to answer to the lord and lady the now king and queen, in a plea, that they may permit the said lord and lady the king and queen to present a proper person to the vicarage of the church of *St. Martin in the Fields*, which is vacant and belongs to their donation, &c. And whereon *John Somers*, knt. attorney general of the said lord and lady the now king and queen, who for the said lord and lady the king and queen prosecutes, for the same lord and lady the king and queen says, that *Humphrey* late bishop of *London* was seised of the advowson of the vicarage of the parochial church of *St. Martin in the Fields* aforesaid, as of a gross by itself, as of fee and right, in the right of his bishoprick aforesaid; and being so thereof seised, he the said late bishop, because the same vicarage was in his diocese of *London*, collated the same vicarage, being vacant, on *T. Lamplugh*, professor of divinity, his clerk, who by virtue of that collation was put into the actual possession of that vicarage in the time of peace in the time of *Charles* the second, late king of *England*, &c. and the same *Thomas* being as aforesaid vicar of the same vicarage, the said *T. Lamplugh* was afterwards rightfully and canonically created and consecrated bishop of the bishoprick of *Exeter*, and the vicarage aforesaid became vacant by the promotion of the said *T. Lamplugh* to the said bishoprick of *Exeter*, whereby it belonged to the same late king *Charles* the second, by reason of his royal prerogative annexed to his crown of *England*, to present a proper person to the vicarage aforesaid so being vacant; wherefore the said late king *Charles* the second, by reason of his royal prerogative aforesaid, to the vicarage aforesaid then so being vacant, presented *William Lloyd*, professor of divinity, his clerk, who on the same presentation of the said late king was admitted, instituted and inducted, into the same in the time of peace in the time of the said late king; and the same *William Lloyd* being as aforesaid vicar of the vicarage aforesaid, the same *William Lloyd* was afterwards rightfully and canonically created and consecrated bishop of the bishoprick of *Asaph*, and the vicarage aforesaid became vacant by the promotion of the said *William Lloyd* to the said bishoprick of *Asaph*, whereby it belonged to the said late king *Charles* the second, by reason of his royal prerogative annexed to his crown of *England*, to present a proper person to the vicarage aforesaid so being vacant; wherefore the said late king *Charles* the second, by reason of his

Count where the King is intitled *ratione prerogativa*.

Bishop of *L.* seised of the advowson,

who collated *T. L.*

who was consecrated bishop of *Exet.*

C. 2. presented *ratione prerogativa W. L.*

who was consecrated bishop of *St. Asaph.*

C. 1. presented *T. T. ratione prerogativa.*

[343]

Who was creat-
ed bishop of *L.*
and therefore,
&c.

royal prerogative aforesaid, to the vicarage aforesaid so being vacant presented *Thomas Tenison*, professor of divinity, his clerk, who on the same presentation of the said late king was admitted, instituted and inducted, into the same in the time of peace in the time of the said late king; and the said *Thomas Tenison* being as aforesaid vicar of the vicarage aforesaid, the same *Thomas Tenison* was afterwards rightfully and canonically created and consecrated bishop of the bishoprick of *Lincoln*; and the vicarage aforesaid became vacant by the promotion of the said *Thomas Tenison* to the said bishoprick of *Lincoln*, and yet is vacant, wherefore it at present belongs to them the said lord and lady the now king and queen, by reason of their royal prerogative aforesaid, to present a proper person to the vicarage aforesaid so being vacant; and the said *Henry* bishop of *London* and *William Lancaster* unjustly hinder them the said lord and lady the now king and queen, to the damage of the said lord and lady the now king and queen 500 *l.* And this the same attorney general of the said lord and lady the now king and queen, who, &c. for the same lord and lady the king and queen is ready to verify, &c.

Oyer of the writ.

And the said *Henry* bishop of *London* and *W. Lancaster* by *A. B.* their attorney come and defend the force and injury, &c. and pray oyer of the writ aforesaid; and to them it is read in these words, to wit, *William* and *Mary* by the grace of God of *England*, *Scotland*, *France* and *Ireland* king and queen, defenders of the faith, &c. To the sheriffs of *London*, greeting: Command *Henry* bishop of *London*, and *W. Lancaster* professor of divinity, that they justly and without delay permit us to present a proper person to the vicarage of the church of *St. Martin in the Fields*, which is vacant and belongs to our donation, and whereof the said bishop and *William* have unjustly hinder'd us, as it is said; and unless they shall do it, summons by good summoners the said bishop and *William*, that they be before us from the day of *St. Michael* in three weeks to shew why they have not done it; and have there the summoners, and this writ. Witness ourselves at *Westminster* 26th day of *September* in the fourth year of our reign. *Cesar*. Which being read and heard, they the said bishop and *William* pray judgment of the writ and declaration aforesaid, because they say, that between the writ and count aforesaid there is a material variance, in this, to wit, that where by the writ aforesaid the said lord and lady the king and queen intitle themselves to the donation of the said vicarage of the church of *St. Martin in the Fields* in full right, yet by the count aforesaid the same lord and lady the king and queen intitle themselves to the donation of the same vicarage, by reason of their prerogative royal annexed to their crown of *England*; wherefore for the variance aforesaid between the writ and count aforesaid, the same bishop and *William* pray judgment of the writ and count aforesaid, and that the said writ may be quashed, &c.

Variance between the writ
and count.

Fr. Pemberton.

Creswell Lewins.

Bartho. Shower.

And

Demurrer.

And the said attorney general of the said lord and lady the now king and queen, who for the same lord and lady the now king and queen prosecutes, for the same lord and lady the king and queen says, that the said plea of the said *Henry* bishop of *London* and *William Lancaster* for quashing the writ aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to quash the writ aforesaid; and that he the same attorney general, who, &c. for the same lord and lady the king and queen to that plea in manner and form aforesaid pleaded hath no necessity, nor is by the law of the land obliged to answer: And this the same attorney general, &c. for the same lord and lady the king and queen is ready to verify: Wherefore for want of a sufficient answer of them the said bishop and *William* in this behalf, the same attorney general, &c. for the same lord and lady the king and queen prays judgment, and that the writ aforesaid may be adjudged good: And a writ to the bishop, &c.

Edward Ward,
Tho. Trevor.

And the said *Henry* bishop of *London* and *William Lancaster* say, that the said plea of them the said *Henry* bishop of *London* and *William Lancaster* for quashing the writ aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to quash the writ aforesaid: Wherefore because the said attorney general of the said lord and lady the now king and queen to that plea doth not answer, nor in any wise deny it, the same *Henry* bishop of *London* and *William Lancaster* as before pray judgment of the writ and count aforesaid, and that the said writ may be quashed, &c. But because, &c.

The King against the Archbishop of York and [344]
Sowton.

Charles the second, by the grace of God of *England, Scotland, France and Ireland* king, defender of the faith, &c. to our justices assigned to take assizes in the county of *York*, greeting: Whereas in the record and proceedings of a certain plea which was in our court before *Francis North*, kn. our chief justice of the bench, and his companions our justices of the bench, by our writ between us and *Richard* archbishop of *York*, and *Stephen Sowton*, clerk, for this, that the same archbishop and *Stephen* should permit us to present a proper person to the church of *Fowlton*, otherwise *Fowleston*, in the county of *York*, which was vacant and belonged to our donation, as it was said, and also in the rendition of the judgment of the same plea before you at the assizes held at the castle of *York* in the county aforesaid, by our writ of *Nisi prius*, according to the form of the statute thereof made and provided, a manifest error hath happened, to the great damage of them the said archbishop and *Stephen*, as by their complaint we have understood: We willing the error, if any hath

Writ of error.
Parl. Rep. 83,
104.
3 Lev. 16.

been, should be duly corrected, and full and speedy justice done to the said archbishop and Stephen in this behalf, command you, that if judgment before you at the assises aforesaid be given, then the record and proceedings of the plea aforesaid, with all things touching them, to us under your seals you distinctly and openly send, and this writ, so that we may have them from the day of St. Michael in three weeks wheresoever we shall then be in England, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein what of right and according to the law and custom of our kingdom of England shall be to be done. Witness ourself at Westminster 25th day of July in the 34th year of our reign.

Prie.

By Robert Sawyer, knt. attorney general of the lord the king.

The answer of Thomas Jones, knt. one of the justices of the lord the king, assigned to hold pleas before the king himself, and Edward Atkyns, knt. one of the barons of the exchequer of the said lord the king, justices of the said lord the king of assise within mentioned.

The record and proceedings of the plea, whereof mention is within made, with all things touching them, before the lord the king wheresoever, &c. on the day within contained, we send in a certain record to this writ annexed, as we are within commanded.

*Tho. Jones,
Edw. Atkyns.*

Pleas at Westminster before Francis North, knt. and his companions, justices of the lord the king of the bench of Trinity term in the 33d year of the reign of the lord Charles the second, by the grace of God of England, Scotland, France and Ireland king, defender of the faith, &c. Roll 1842.

Otherwise, as it appears in *Hillary* term last past, *Roll* 495, it is contained thus, to wit, *York*, to wit, *Richard* archbishop of *York*, and *Stephen Sowton*, clerk, were summoned to answer to the lord the now king in a plea, that they may permit the said lord the king to present a proper person to the church of *Fowlton*, otherwise *Fowleston*, which is vacant and belongs to his donation, &c. And whereon *C. Levinz*, knt. attorney general of the said lord the king, who for the same lord the king in this behalf prosecutes, for the same lord the king says, &c. [unto]. On which day here comes as well the said *C. Levinz* attorney general of the said lord the king, who, &c. in his proper person, as the said *Stephen* by his attorney aforesaid; and hereupon the said plea of the said *Stephen* above for quashing the writ aforesaid above pleaded being seen, and by the justices here more fully understood, it seems to the same justices here, that the matter by the same

same lord the king in his writ aforesaid alledged is sufficient in law to maintain his writ aforesaid, any matter by the said *Stephen* above alledged notwithstanding: Therefore it is considered, that the said *Stephen* do answer the said lord the king to his writ and count aforesaid, &c.

Respond
Ouster.

And hereupon the said *Stephen* as before defends the force and injury when, &c. and says, that he is parson of the church of *Fowlton*, otherwise *Fowleston* aforesaid, imparsoned in the same, on the presentation of the said *W. Stephens*; and says the said lord the now king, ought not to trouble or impeach him the said *Stephen* by reason of the premises, because he says, that well and true it is, that the said earl of *Carlisle* was seised of the advowson of the church aforesaid, as of a gross by itself, as of fee and right; and being so thereof seised, to the church aforesaid, being vacant, presented the said *W. Dealtry* his clerk, who on the presentation of him the said earl was admitted, instituted and inducted, into the same in the time of peace in the time of the said lord the now king; and that the same earl, the church aforesaid being full and consulted, afterwards at *Fowlton*, otherwise *Fowleston* aforesaid, by his writing aforesaid, gave and granted to *T. S.* clerk, the first and next advowson, donation, presentation and free disposition of the church aforesaid for the first and next avoidance of the same only: By virtue of which grant the same *Thomas* was possessed of the advowson of the church aforesaid for the first and next avoidance of the same; and being so thereof possessed, the same *Thomas* afterwards at *Fowlton*, otherwise *Fowleston* aforesaid, by his writing aforesaid granted and assigned to the said *W. Stephens* all his right, estate, title and interest aforesaid, which he then had of and in the advowson aforesaid, by virtue whereof the same *W. Stephens* was of the advowson of that church for the said first and next avoidance of the same possessed; and that he the said *W. Stephens* being so thereof possessed, the church aforesaid became void by the death of the said *W. Dealtry* the last incumbent in manner and form as in the declaration aforesaid for the said lord the now king is above supposed: But the said *Stephen* farther says, that the said *W. Stephens* of the advowson aforesaid in form aforesaid being possessed, to the church aforesaid, so as aforesaid being vacant, spontaneously, lawfully, simply and absolutely presented the said *Stephen* his clerk, as he well might; who on the presentation of him the said *W. Stephens* was admitted, instituted and inducted, into the same in the time of peace in the time of the said lord the now king; and now is parson imparsoned in the same church on that presentation; without that, that it was simoniacally and corruptly agreed between the said *Stephen* and the said *Anne Stephens* in manner and form as by the declaration aforesaid for the said lord the now king is above supposed: And this he is ready to verify: Wherefore he prays judgment if the said lord the now king will or ought to trouble or impeach him by reason of the premises, &c.

Parson imparsoned.

Earl of *Carlisle*
seised in gross,
and presented
W. D.

[345]

and after granted
the next avoidance to *T. S.*
who assigned it
to *W. S.* by
whom the defendant
was presented.

Traverse of the
simony.

Issue on the traverse.

Jury awarded.

The postea.

Challenge to the array for want of hundredors.

Demurrer.

And the same attorney general, &c. for the said lord the king as before says, that the church afore said being vacant, it was simoniacally and corruptly agreed between the said *Stephen* and the said *A. Stephens*, as by the declaration afore said for the said lord the king is above supposed: And this for the same lord the king he prays may be inquired of by the country: And the said *Stephen* likewise: Therefore the sheriff is commanded, that he cause to come here from the day of the Holy *Trinity* in 3 weeks 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. On which day the jury between the said lord the now king and the said *S. Sowton* in the plea afore said was respited between them here until this day, to wit, from the day of *St. Michael* in three weeks then next following, unless the justices of the lord the king, assigned to take assises in the county afore said, by the form of the statute, &c. should first come on *Wednesday* 13th day of *July* last past at the castle of *York* in the county afore said: And now here on this day comes as well the said *R. Sawyer*, attorney general of the said lord the king, who, &c. in his proper person, as the said *Stephen* by his attorney afore said: And the said justices of assise before, &c. have sent here their record in these words: Afterwards the day and place within contained before *William Dolben*, knt. one of the justices of the lord the king, assigned to hold pleas before the king himself, and *W. Gregory*, knt. one of the barons of the Exchequer of the said lord the king, justices of the said lord the king, assigned to take assises in the county of *York*, by the form of the statute, &c. comes as well the within named *R. Sawyer*, knt. attorney general of the lord the king in his proper person, who for the same lord the king in this behalf prosecutes, as the within written *S. Sowton* by his attorney within contained: And hereupon publick proclamation being made here in court, &c. and the jurors of that jury being called likewise come; and upon this the said *Stephen* challenges the array of the panel within written, because he says, that the town of *Fowlston*, otherwise *Fowleston*, from which neighbourhood the jurors afore said were returned, lies, is, and at the time of arrayment of the panel afore said was situate and lying within the hundred or wapentage of *Dicking* in the county afore said: And farther says, that no four of the jurors of the said panel have any thing within the hundred or wapentage of *Dicking* afore said, nor did at the time of the arrayment of the panel afore said dwell in the same hundred or wapentage: And this he is ready to verify: Wherefore he prays judgment, and that the panel afore said may be quashed, &c.

And the said *R. Sawyer*, who, &c. says, that the said challenge of the said *Stephen* to the array of the panel afore said by him the said *Stephen* above alledged is not sufficient in law to quash the array of that panel, and that he to that challenge in manner and form above alledged hath no necessity, nor is by the law of the land obliged, to answer: And this he is ready to verify: Wherefore he prays judgment, and that the array of that panel may be affirmed.

And

Quare Impedit.

† 345

And the said *Stephen*, for that he hath above alledged a sufficient challenge to quash the array of the panel aforesaid, which he is ready to verify, which said challenge the said *R. Sawyer* doth not deny, nor to the same in any wise answer, but doth altogether refuse to admit that averment, prays judgment, and that the array of that panel may be quashed: And upon this the challenge aforesaid of the said *Stephen* to the array of the panel aforesaid being seen, and by the justices here fully understood, it seems to the said justices here, that the array of that panel in manner and form aforesaid arrayed and returned is insufficient, and of no force and effect in law: Therefore it is considered, that the said panel be quashed and held as void: Therefore the sheriff is commanded, that he cause to come anew here in the octave of *St. Hillary* 12, &c. to recognize in form aforesaid: On which day here comes as well the said *R. Sawyer*, who, &c. in his proper person, as the said *Stephen* by his attorney aforesaid: And the said sheriff hath not returned the writ, therefore the sheriff is as before commanded, that he cause to come here from the day of *Easter* in 15 days 12, &c. to recognise in form aforesaid: On which day here comes as well the said *Robert Sawyer*, who, &c. in his proper person, as the said *Stephen* by his attorney aforesaid: And the sheriff hath not returned the writ, therefore the sheriff is as before commanded, that he cause to come here from the day of the Holy *Trinity* in three weeks 12, &c. to recognize in form aforesaid, &c.

Joinder.

The array quashed, and venire de novo awarded.

[346]

York, to wit. **T**HE jury between the lord the king, plaintiff, and *Stephen Sowton*, clerk, in a plea of *Quare impedit* is respited here until from the day of *St. Michael* in three weeks, unless the justices of the lord the king, assigned to take assises in the county aforesaid, by the form of the statute, &c. shall first come on *Tuesday* 25th day of *July* at the castle of *York* in the county aforesaid for want of jurors, because none come; therefore let the sheriff have the bodies, &c. And be it known, that the justices have here in court this same term delivered the writ thereof to the under-sheriff of the county aforesaid in form of law to be executed: Afterwards the day and place within mentioned, before *Thomas Jones*, knt. one of the justices of the lord the king, assigned to hold pleas before the king himself, and *Edward Atkins*, knt. one of the barons of the exchequer of the said lord the king, justices of the same lord the king, assigned to take assises in the county of *York*, by the form of the statute, &c. comes as well the within named *Robert Sawyer*, knt. attorney general in his proper person, who for the same lord the king in this behalf prosecutes, as the said *Stephen Sowton* by his attorney above named; and upon this publick proclamation being made here in court, &c. and the jurors of the jury, whereof mention is within made, being called, some of them, to wit, *J. S. W. J. H. B. J. O. R. P. G. C. P. P. J. R. R. H.* and *E. F.* come, and on the jury aforesaid are sworn: And because the rest

The Jurata.

The Postea.

Proclamation.

Tales.

of

35 H. 8. c. 6.
3 G. 2. c. 25.

Verdict.

Judgment for
the king at the
assises.

of the jurors of that jury have not appeared, therefore others from the by-standers, by the sheriff of the county aforesaid hereto elected, at the request of the said *Robert Sawyer*, who, &c. and by the command of the justices aforesaid, are added anew, whose names are impanelled and filed according to the form of the statute in such case lately made and provided; and the jurors so added anew, to wit, *C. F.* and *R. H.* being called likewise come, who to say the truth of the premisses above mentioned, together with the other jurors aforesaid first impanelled and sworn, being elected, tried and sworn, say on their oath, that it was simoniacally and corruptly agreed between the said *Stephen* and the before named *Anne Stephens*, the church above mentioned being vacant, as by the declaration above mentioned for the said lord the king is above supposed, and as the said attorney general for the same lord the king above in replying hath alledged: And the same attorney general for the said lord the king, according to the form of the statute, &c. at this same assises prays judgment of and upon the verdict aforesaid to be given for the said lord the king, and the writ of the said lord the king to be directed to the archbishop to remove the said *Stephen* from the church aforesaid, and to admit a proper person to the same church, on the presentation of the said lord the king: Therefore it is considered by the same justices at the assises aforesaid, that the said lord the king do recover against the said *Stephen* his presentation to the church aforesaid, and have a writ to the said archbishop, that notwithstanding the claim of the said *Stephen*, altho' the said *Stephen* is admitted, instituted and inducted into the said church, he remove the said *Stephen* from that church, and without delay admit a proper person to the same church on the presentation of the said lord the king: And the said *Stephen* in mercy, &c.

END OF THE FIRST VOLUME,

